REGULAR ARBITRATION PANEL

In the Matter of the Arbitration between The U.S. Postal Service and The National Association of Letter Carriers, AFL-CIO	Grievant: Class Action Post Office: Dorchester MA Case Number: B11N-4B-C 14353337 Union Number: 14124C58 DRT # 14-331700

Before: Donald J. Barrett, Arbitrator

Appearances:

For the U.S. Postal Service: Harriet H. Rynkiewicz, Labor Relations Specialist (A)

For the National Association of Letter Carriers: Brian Manning, Area Steward

Place of Hearing: Boston MA General Mail Facility

Date of Hearing: June 2 and 16, 2015

Award: This grievance is sustained

Date of Award: July 28, 2015

AWARD SUMMARY

The Union has demonstrated convincing evidence that management at the Dorchester Post Office has made improper workhour adjustments for letter carriers. The Union has also demonstrated satisfactorily that many of the affected letter carriers, and fact circumstances are dissimilar to a previous grievance. It is also determined that this grievance is timely, and not dismissive due to various legal doctrines.

STATEMENT OF PROCEEDINGS:

This grievance was presented at hearing over the course of two days, June 2nd, and June 16th, 2015 at the Boston MA General Mail Facility. At the conclusion of the second day of hearings, the parties agreed to submit written closing statements/post hearing briefs. It was agreed that each party would submit such, postmarked no later than July 17th, and that each party would provide the arbitrator with a separate copy of the others statement, in a pre-addressed, pre-stamped envelope so that the arbitrator, upon receipt of each submission could send it respectively to the parties. The submissions were received by the arbitrator timely on July 21st, and promptly sent to each party. The record of these proceedings closed on that date.

This matter was presented at hearing pursuant to the grievance-arbitration provisions of the 2011-2016 Collective Bargaining Agreement, also known as the Agreement, or Contract between the National Association of Letter Carriers, also known as the Union, and the US Postal Service, also known as the Service, or Management.

Counsel for each party was ably prepared, enthusiastic, and professional, and was afforded the opportunity to be heard, to present evidence, argument, and witnesses, of which they exercised those rights with tempered vigor.

Each party presented oral Opening Statements, and as stated above, submitted written Closing Statements/Briefs after the hearings.

The Union provided their written closing, Pages 1-14, with three previously issued regional arbitration awards for consideration.

The Service provided their written closing, Pages 1-10, with five previously issued arbitration awards for consideration, inclusive of one previously issued by this arbitrator.

I have thoroughly read each award provided, and given due consideration to each one.

The parties were provided opportunity to call witnesses on their behalf, and at the request of the parties, each witness was duly sworn prior to offering their testimony. Each party called one witness.

The Union presented Mike Murray, Union Steward/Sergeant-at-Arms.

The Service presented Rose Antunes, Acting Manager/ Supervisor at Dorchester MA postal facility.

JOINT EXHIBITS:

Joint 1 – The Agreement, inclusive of the Joint Contract Administrative Manual (J-CAM)

Joint 2 – Moving Papers, consisting of Pages 1-833

SERVICE EXHIBITS:

M-1- Union Request for Information dated August 26, 2014

M-2- Fiscal Year Calendar 2014, 2015.

M-3- Class Action grievance, NALC Number 14124-C-37, Pages 1-377 (Accepted into evidence over the Union's objection. Noted.)

STIPULATED FACTS NOT IN DISPUTE:

The parties did not agree to any.

ISSUE AS FRAMED BY THE PARTIES:

Counsel at hearing did not agree with the issue as stated by the parties Step B Team, nor did they agree, between themselves at hearing on what the issue should be, instead asking the arbitrator to determine what the issue should be at the conclusion of this hearing/close of the record. Therefore, after receiving all evidence, argument, witness testimony, and the digestion of nearly two thousand pages of documents submitted by the parties, I find that the issue is best considered as followed:

1. Is this grievance procedurally defective pursuant to the Doctrines of Latches, Res judicata, and Collateral Estoppel, and if so, should this grievance be summarily dismissed?

2. Is this grievance timely filed by the Union pursuant to Article 15 of the parties National Agreement, and if not should it be summarily dismissed, or if so, is it indicative of an ongoing, yet separate violation, and if so, what is the proper remedy for such?

3. Did the Service violate Articles 8, 15, 19 and/or 41 of the Agreement in the manner by which they made adjustments to letter carrier workhours, and if so what is the proper remedy?

(Note: Arbitral history records the inherent risk to the parties when they are unable to agree upon the issue to be decided. Particularly after two days of intense hearings, and nearly two thousand pages of submitted documents, the arbitrator must decide what it is the parties are asking of him. That is no small task and one which no doubt may cause dissatisfaction to one, or both of the parties. However after digesting all of the information provided to this arbitrator at hearing, and in the documents submitted throughout, I find, in my opinion the above best represents what the parties are asking of me.)

BACKGROUND:

The Union filed a grievance on November 25, 2014 charging the Service with violating the parties National Agreement, Articles 8,15,19, and 41. The Union argues that these violations are ongoing from pay period 10 thru pay period 18, 2014 (April 19 – August 22nd) and beyond.

The Union makes claim that the Service has continued to improperly adjust letter carrier workhours to avoid the payment of overtime, and to manipulate the process of workhour adjustments to better favor the office workhour reports.

The Service states that this grievance is both untimely, and has been previously addressed, and resolved in an earlier filed grievance of the same time frame, with the same cited employees, all under the same circumstances, and should therefore be dismissed.

The parties were unable to resolve their differences during the grievance process, offering diametrically stated positions throughout, thus leading to the invocation of the arbitration procedure which took place over two hearing dates.

CONTRACT PROVISIONS CITED:

"Article 8, Hours of Work"

Section 1. Work Week

"The work for full-time regulars shall be forty (40) hours per week, eight (8) hours per day within ten (10) consecutive hours, provided, however, that in all offices with more than 100 full-time employees in the bargaining units the normal work week for full-time regular employees will be forty hours per week, eight hours per day within nine (9) consecutive hours. Shorter work weeks will, however, exist as needed for part-time regulars."

Section 4. Overtime Work

A. "Overtime pay is to be paid at the rate of one and one half (1 ½) times the base hourly straight time rate. (The preceding paragraph, Article 8.4.A., shall apply to **City Carrier Assistant** Employees.)
B. Overtime shall be paid to employees for work performed only after eight (8) hours on duty in any one service day or forty (40) hour in any one service week. Nothing in this Section shall be construed by the parties or any reviewing authority to deny the payment of overtime to employees for time worked outside of their regularly scheduled work week at the request of the Employer. (The preceding paragraph, Article 8.4.B., shall apply to **City Carrier Assistant** Employees.)"

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 provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement."

Article 19, Handbooks and Manuals

"Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions."

"Article 19 shall apply in that those parts of all handbooks, manuals and published regulations of the Postal Service, which directly relate to wages, hours or working conditions shall apply to **CCA** employees only to the extent consistent with other rights and characteristics of **CCA** employees **provided for** in this Agreement."

Article 41, Letter Carrier Craft

Section 3 Miscellaneous Provisions:

K. "Supervisors shall not require, nor permit employees to work off the clock."

POSITION OF THE PARTIES IN THE MATTER BEFORE ME:

"The National Association of Letter Carriers"

The Union vigorously maintains that Management at the Dorchester Postal facility has repeatedly made improper work hour adjustments for the letter carriers at this office.

The Union states that Management at this office has willfully and deliberately made erroneous time deletions and clock move entries into the Time and Attendance (TACS) system in an effort to avoid the payment of overtime to letter carriers. The Union states further that, while some letter carriers have been paid for the improper time adjustments, several other letter carriers entitled should have been paid but were not.

The Union further states that many letter carriers had time disallowed throughout the period of this grievance, with time deletions equaling the exact amount of time the letter carrier would have been performing their duties at the penalty overtime rate of pay, and that this was done solely to avoid this overtime. That Union states that Management was also manually extending letter carrier's lunch breaks, which also was for the exact amount of time the letter carrier would have earned penalty overtime hours.

The Union maintains that Management has often made these improper manual workhour adjustments without properly, and timely discussing the adjustments with the impacted letter carrier, that on many occasions they have simply notated that they discussed the change with the employee without documenting a reason for such an adjustment, and that many of the deleted time adjustments were for otherwise legitimate reasons such as traffic, vehicle breakdown, or walking back to the office from one's route.

The Union maintains further that Management made so many erroneous adjustments to letter carriers time that one supervisor would have to make corrections made by another supervisor in an attempt to demonstrate a route was in compliance for that day.

The Union offers that numerous grievances have been filed in the past over the exact same issues, with resolutions calling for payment of overtime to impacted employees, and "cease and desist" orders being issued to Management at the Dorchester facility, yet this issue continues unabated. The Union also offers that many of the improper adjustments made indicated the employee identification number (EOD) of a supervisor other than the supervisor inputting the improper adjustments.

The Union states that this grievance is timely, and differs from a similar, but not same grievance filed earlier, and that the resolution of the other similar grievance did not address all the letter carriers whose time was improperly adjusted by Management. The Union states further that after reviewing the nature of the earlier grievance, it was determined that the scope of this issue was more extensive than first thought, and the time required to investigate and process this grievance required more effort. The Union asserts that time limits for the processing of this grievance were continuously extended by the parties.

The Union argues that while this grievance may be similar to the previously filed, and resolved grievance (C-37), they are not identical, or duplicative, that this grievance contains different letter carriers, an ongoing violation of previous violations that have not been addressed or adjudicated thus far, and represent an ongoing violation of the "cease and desist" orders to stop making unauthorized, and improper time adjustments.

The Union asks that this grievance be sustained, and a punitive monetary award be granted to letter carriers, language authored by the arbitrator that prevents a former supervisor, should that supervisor in the future return in a similar capacity, be denied access to the TACS system, evidence provided to the Union that other supervisors from the Dorchester facility have completed TACS training, as outlined in a previous grievance settlement. The Union also asks that two named supervisors be mandated to complete ethics/conduct training, with evidence of such training provided to the Union. The Union also asks that the US Postal Service make a "sizable monetary donation" to the Muscular Dystrophy Association in the name of the Dorchester Post Office letter carriers. The Union also seeks any other remedy that this arbitrator deems sufficient to ensure future compliance, and also to retain jurisdiction over the remedy for no less than ninety calendar days from the date of this award.

US Postal Service

The Service strenuously maintains that this grievance is procedurally defective, and is duplicative in part of the previously resolved similar grievance. The Service argues that the Union's effort to file yet another grievance at the same time the earlier, same grievance, is being resolved constitutes bad faith, and undermines the grievance process. As further evidence of such, the Service offers that the Union steward waited ninety days from the time he received the relevant TACS reports for the selected time period to file his grievance, and further that the steward made a new request for information, dated September 24th for information that he clearly was aware of on August 27th when he filed the first, similar grievance – all to create the illusion of multiple grievances.

The Service maintains further that the Union is using the same letter carriers, for the same time frame in this grievance as they previously cited in the earlier, resolved grievance. The Service states that those letter carriers identified in this grievance, when found by Management to have no documentation and/or support for the adjustments they made, did rectify those unsupported adjustments, thus nullifying the Union's arguments.

The Service offers that any previous resolutions claimed by the Union should be viewed with skepticism, such as their claim that thirty three prior grievances were resolved with "cease and desist" orders, when in fact twenty two of these settlements were for the exact same incident date.

Further, that resolutions at the Formal A step are not precedent and should not be considered. The Service submits that any unexplained changes to letter carriers lunches, as charged by the Union in this grievance that may have been improperly documented does not, in itself present validity to the Union's charge of a violation of the Agreement.

The Service returns to the proposition that this grievance (C-58) is essentially the exact same grievance as that previously filed, and resolved. (C-37) That each grievance is the exact same issue, the same time period cited by the Union, the same office, involving the exact same Managers, and some of the same letter carriers. The Service offers that the exact same arguments, verbatim, were made by the Union in the first, resolved grievance as they have made in this matter.

The Service offers further that this grievance should be denied based upon the Doctrine of Collateral Estopal, as it clearly meets its definition. That the Union, by the resolution of C-37, the exact same facts circumstances as this grievance, C-58 is thereby prevented from once again trying the exact same issues over again in an attempt to gain a greater benefit, including punitive damages, that which they did not agree to in the first grievance.

The Service argues that this grievance should also be denied based upon the Doctrine of Res judcata, that which denies the" re-litigation of the same cause of action between the same parties where there is a prior judgement..." The relevancy being that the fact circumstances of C-37, which has been adjudicated, is the same as the fact circumstances of this grievance, C-58.

The Service also offers that the Union knew, or should have known about all the letter carriers at Dorchester whose time was adjusted without support by Management because they were in possession of all the same information used in C-37 and used in this grievance at the same time they filed the first grievance on August 27, 2014. The Service provided the information used in both grievances before the first grievance was filed, yet the Union deliberately delayed filing the second grievance in its attempt to project far more issues that factual, and to seek an additional remedy in addition to that which they accepted in the resolution of the first grievance, all of which lends more reason to deny this grievance as untimely.

The Service takes exception to the Union's representation that some of the letter carriers cited in this case were unaware of the time disallowances, or that they offered no objection to the adjustments when made. The Union has provided no objective proof of such, in fact Management at the Dorchester facility has demonstrated employees had been notified of adjustments. Further, Management has the exclusive right to make adjustments to letter carrier time when it is determined to be appropriate, as was the case with many of the cited employees. Management offered many instances of letter carriers out of uniform, at their homes while on duty, and off their assigned route.

The Service acknowledges that some adjustments were made improperly, and after reported and found to be accurate, monetary adjustments were made for the letter carrier. These corrective adjustments have been made in both grievances, but should not be viewed as wrong doing by Management, or proof of an ongoing violation.

The Service passionately maintains that there is no violation of the National Agreement, that the grievance is untimely, and without merit as all issues raised in this grievance have previously been adjudicated in the first grievance. The Service maintains that it is the Union who has acted in a detrimental and injurious fashion, and that it should be noted that the Union's request for punitive damages is wholly inappropriate, and without basis, and would serve as no other purpose than to punish the Management of the Dorchester facility.

For all of these reasons, the Service requests this grievance be dismissed/denied – that the Union failed to meet its requisite burden, and that the burden imposed upon the Union should be that of clear and convincing evidence to prevail.

DISCUSSION AND OPINION

[I need not remind the parties of the complexity and voluminous nature of this matter - counsel has been involved in these issues far longer, and to a far greater degree than the arbitrator. However, in addition to the argument, testimony, evidence, and hundreds upon hundreds of pages that represent the "case file", the other issue which I take "judicial note" of is the acrimonious nature of the relationship exhibited between the parties in this matter. While that in itself is not before me for decision, I feel a responsibility to the parties that is inherent in my duties as your arbitrator to call attention to it. (As was also done during hearing) No doubt this decision may give rise to further animosity – I hope not, but suffice to say that the bitterness, and accusations made between the parties, more unusual than "normal" in a labor-management relationship may have been cause for the parties' inability to be more accommodating in the processing, and presentation of these issues.

That said, it is my hope in this complex matter before me to be as considerate as possible to the positions and pleadings of each party, and yet render opinion as clear and succinct as will do justice to their overwhelming efforts.]

The introductory issue to be addressed is the Service claim that this grievance, C-58 is procedurally defective pursuant to the Doctrines of Laches, Collateral Estoppel, and Res Judicata. After a thorough review of the facts provided to me, and a review of the common application of each doctrine as it applies to the evidence provided, I find that the claim, while a worthy effort is not a valid one.

The Service argues, passionately that the matter before the arbitrator is, "...the exact same issue, for the exact same time period, for the exact same office, involving the exact same Management Team, and involving **some** of the exact same letter carriers" as that which was previously grieved and resolved by the same parties. (Service Closing Argument, Page One)(Bold added)

The Service adds that the Union made, "**essentially** ...the exact same arguments in the Resolved 14-124-37 Grievance...as made in the 14-124-58 grievance." (Bold added)

The Service also argues that the Union used many of the same documents in this grievance as used in the previous grievance. These assertions by the Service are most impressive, and at first light could lead to a finding sought by the Service.

As such, the Service argues that the Doctrine of Collateral Estoppel, and Res Judicata bars the Union from re-litigating that which has already been litigated by a "court of record", i.e. the Step B Team resolution.

Simply, "estoppel" means, "...that when a fact has been agreed on, or decided in a court of record, neither of the parties shall be allowed to call it in question, and have it tried over again at any time thereafter, so long as judgement or decree stands unreversed." (Humphrey v. Faison, 247 N.C. 127, 100 S.E.2nd 524,529.) This is also known as "Estoppel by Judgement."

The relevant offering of "Res judicata", as it relates to the instant matter at hand, states, "...a final judgement rendered by a court of competent jurisdiction (Step B Team) on the merits is conclusive as the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action." (Matchett v. Rose, 36 Ill.App.3d 638, 344 N.E.2nd 770,779)

A bar to subsequent action involving the same claim, demand or cause of action (Matchett v. Rose) and a fact that has been agreed on, or decided in a court of record. (Humphrey v. Faison). One must ask if the Union, in the instant grievance was, in fact asking for the exact same claim, or demand as they were in the previous grievance, or that the Union, based upon the evidence presented to me, appears to be making claim to alleged improper adjustments on behalf of <u>other employees</u> different than those specifically identified in the first, resolved grievance. (Underline added) Would this not, in fact be another, different claim? I am of the opinion that it is. In fact, the Service itself offers, when referring to the second grievance involving, "some of the exact same letter carriers", an implication that this grievance contains letter carriers new to this grievance, not offered in the previously resolved grievance.

The Service also states that, "...the Union essentially made the same arguments" in the previous grievance", and "just mostly different named carriers", (Service Closing Argument, Pages 1, 2 & 7) and this grievance, "...is duplicative in part of already resolved" grievance. (J-2, Page 6) (Underline added)

The Service argues that it is improper for the Union to "go back and use different carriers and file another grievance, all in an effort to make the alleged violations appear to be a continued pattern..." (J-2, Page 7) In this regard, it is most important to the continued existence of any labor-management relationship to understand the inherent right of the Union to "go back" to investigate, and if they themselves believe cause exits, to file a grievance. To deny the Union the opportunity to exercise that contractual right, reasonably and responsibly as outlined in the Agreement would begin to fracture not just the bargaining agreement, but more importantly the continued relationship between the parties. This an arbitrator views with the utmost respect, as well as caution.

The arbitrator is convinced that the doctrines offered above are not empowered by the Union's instant grievance. That the claims made by the Union appear to be for different people, at different times, and that not all fact circumstances are the same, a perquisite for appropriately estopping the Union from going forward. Further, the Service's own declarations as offered above, in my opinion support this conclusion.

The Service argues, as it relates to "latches" that they have been, "...prejudiced by both the timing with which and the manner in which this grievance has been filed." That the Union knew prior to the time they filed this grievance the TACS changes, inputs, and adjustments being made at the Dorchester office were similar to the exact same grievance previously resolved, as it is in this grievance. (J-2, Page 9)

The Service is correct to associate "latches" with timing for this doctrine, under any definition it is about timing. The "Doctrine of laches is based upon maxim that equity aids the vigilant and not those who slumber on their rights. It is defined as neglect to assert a right or claim which, taken together with lapse of time and other circumstances causing prejudice to adverse party, operates as bar in court of equity." Also relevant is, "A failure to do something which should be done or claim or enforce a right at a proper time."

As further stated, "Delay in enforcement of rights until condition of other party has become so changed that he cannot be restored to his former state." Further offered is, "To create "estoppel by laches" party sought to be estopped must with knowledge of transaction have done something to mislead other party to his prejudice." (Black's Law, 6th Ed. 1990)

To agree with the Service's position invoking this doctrine would be to, in essence switch positions with the Union, for under the fact circumstances before me, it would be the Service who would be harmed only if the Union delayed processing a grievance for so long that the Service's interests, and ability to provide an informed judgement were prejudiced.

To invoke this doctrine because the Union filed a timely grievance, which I find they did, and say they were prejudiced because they did is an inappropriate, and somewhat reversed application of this doctrine. As offered above, "laches" is all about timing – and the harm is caused if the opposing party fails to timely, and vigilantly exercise their right to seek redress for an alleged misdeed, not the defendant being harmed because the opposing party is acting without delay. Surely a grievance filed beyond the time limits imposed by the parties bargaining agreement, or "untimely" would justifiably be denied by the Service, yet from the record before me, this grievance is not untimely. The record is flush with grievance extensions approved by the Service. (See J-2, Pages 40, 42, 715,743,744 & 750)

Therefore, for all of the reasons as stated above, I do not find appropriate, nor applicable the Service's reliance upon the doctrines, and do not find this grievance to be procedurally defective.

Regarding the second issue, did the Union file a timely grievance, pursuant to Article 15, and as offered above, for those reasons I find that they did so.

While the Service argues that the Union representative had information in hand no less than 90 days before filing this grievance, which he relied upon for this grievance, evidence is compelling that the Union was conducting their investigation into other, continuing, and/or additional violations of the same nature. While a reasonable person may view the longevity, or brief lifetime which the Union steward employed to conduct his investigation, and while a reasonable person may find such longevity unreasonable, or even longer than the time it takes Congress to pass legislation, the simple fact that he was granted numerous extensions to conduct his "investigation" diminishes the Service's charge of an untimely filed grievance. The arbitrator would be hard pressed therefore to find otherwise, even though the arbitrator would sometimes advise that, "less is more", and that also applies to time.

Now we come to the third, and final issue to be determined, "Did the Service violate Article 8 & 15 of the National Agreement, and if so what is the proper remedy?"

As offered above, the parties blessed the arbitrator with a bounty of evidence, argument, and documents. Counsel for each is abundantly qualified, and vigorous in the pursuit of their respective positions, and the arbitrator is better because of it, no matter the parties' position with this outcome.

While I find many similarities between the first grievance, C-37, and the instant grievance, C-58, the glaring fact is the number of employees for whom additional pay adjustments were made *in addition to the first grievance.* (Italics added)

The record in this matter reflects numerous employees NOT cited in C-37 for pay adjustments. While C-37 finds that Management at the Dorchester office, "...improperly disallowed work hours by extending individual Carrier lunch periods over several months despite a prior cease and desist.", that grievance offered remedy for employees Grant, Pires, Maccow, Pasqual, Johnson & Taylor. (Step B Team, C-37, dated January 23, 2015)

This grievance, C-58 demonstrates that additional pay adjustments were made, not inclusive of those in the previous grievance (See J-2, Pages 770-817) that are indicative of further violations of the Agreement beyond those applied in the previous grievance.

The Union argues that despite numerous "cease and desist" orders issued to prevent Management at the Dorchester facility from improperly adjusting letter carrier work hours, the management team there continued to do so. I am in agreement. The clear and convincing evidence, as stated above, and presented in this matter leads to this conclusion.

As noted above, additional pay adjustments were made for additional employees, not part of the earlier resolution, and the record also reflects numerous other occasions when "Unauthorized Overtime Record, PS Form 1017-B" were annotated for Pay Period 10 thru 18, 2014, and into September, (that do not appear to be totally inclusive of the first grievance) which is the time frame cited in this grievance. (J-2, Pages 252, 283, 293, 349, 350, 373, 405, 435, 453 519, 520, 531, 532, 534, 535, 536, 538, 547, 551, 552.)

While each of these annotations alone do not reach such a conclusion, the sum total of all this evidence can lead in no other direction. And when you add to that the history of this office, related to this issue, it does not provide for benefit of doubt.

It appears that Management at this office has, many times before improperly adjusted the work hours of their employees. They have agreed to a cease and desist order, no less than in 2013, and received one from the Step B Team in the resolution of the previous grievance.

Evidence not in dispute by the parties, and offered by the Service's own witness at hearing is that a manager at this office was inappropriately using her employee identification number to input many of the previous adjustments. Further evidence not in dispute, is that supervisor's ID numbers who were not on duty, were being used to input letter carrier adjustments.

The total sum of these actions, not in dispute, leaves no other conclusion than the Service has violated the Agreement, similar to the violations previously adjudicated. One must look only at the resolution of C-37. What was the resolution of that earlier grievance? Is there additional letter carriers who have had pay adjustments than those granted remedy in that previous grievance, and the answer is yes? Were those additional letter carriers part of this grievance, and the answer is also yes? (See J-2, Pages 770-817)

Are there additional letter carriers during the cited period of this grievance whose time has been improperly adjusted? The numerous pages of Form 1017-B offered above, those cited within this grievance, and the poor history exhibited by the Dorchester Management team leads me to that conclusion that yes, there is. One can reasonably argue that these forms, by themselves do not contractually constitute a violation of the parties agreement, and they would be correct. However, the arbitrator is convinced that the additional pay adjustments made by Supervisor Tran (J-2, Pages 770-817) is convincing evidence of such a violation.

Further, each of the employee statements contained in this grievance, alleging inappropriate adjustments to their time, and/or refuting management's assertion that they spoke to the employee are unrefuted as fact. (J-2, Pages 168-incontinuous to-387) The Service argues that the Union had opportunity to call Management officials as witnesses yet failed to do so at their peril.

I disagree. It is the Service's obligation, as they see fit to provide witnesses to refute the Union's charges, not the Union's to refute their own offerings.

I find no evidence that many of the employees who provided statement's for the record in this case, and whose Form 1017-B accompany their statements were part/parcel to the first case that was resolved. Further evidence of a separate violation not resolved by the first grievance.

For the reasons cited above, I find that the Service has violated the parties Agreement, Articles 8 & 15.

REMEDY

The Union is seeking "punitive damages" in this case. I empathize with their position, and understand their desire to "send a message" that will resonate clearly with the Service in the future. However, any finding of such damages must, in fairness, be tempered by the fact that two of the three more responsible parties are no longer a part of the Dorchester postal facility. Therefore, to now punish the existing parties, when most responsible parties are no longer there would not, I believe serve any useful, or lasting purpose.

This is not to say that responsibility does not remain. Institutionally there is an obligation for each party to fully abide by the dictates of the bargaining agreements, and when there is a violation(s) of such, there is usually a response to such, a penalty. That penalty should be proportionate, and not emotional, nor simply for the sake of penalty. It is with this in mind that the award is thus rendered.

AWARD

This grievance is sustained.

The parties are to meet, in good faith, within 30 days to determine those letter carriers identified in this grievance whose workhours may have been adjusted inappropriately, (exclusive of any employee previously identified and receiving a pay adjustment) and immediately implement appropriate adjustments to their hours/pay.

The Postal Service is ordered to cease and desist from any further improper TACS workhour/pay adjustments by management at the Dorchester postal facility. Failure to abide by this order, when demonstrated with factual evidence shall result in punitive damages of fifty (50) dollars per letter carrier, per individual infraction, in addition to appropriate adjustments made.

Evidence sufficient to demonstrate that Supervisor Antunes received TACS retraining, as mandated by the previous grievance shall be provided to the Union within fifteen (15) days of receipt of this award.

The Postal Service shall pay Branch 34 the sum of two hundred and fifty (250) dollars toward compensation for the Union's repeated labor due to the continued violations of the bargaining agreement over this same issue. The payment shall be made no later than thirty (30) days from receipt.

The arbitrator shall retain jurisdiction for a period of no less than ninety (90) days from the date of this award for all purposes related to this award.

[Note: The arbitrator pleads indulgence of the parties lastly by offering remarks similar to those in which he began. The outcome of this grievance, no doubt will bring satisfaction to neither party. Each sought complete vindication of their respective positions, and despite that, I have ordered the same parties to meet soon and find agreement over issues that have previously eluded them. My advice, my hope is that you move past prior disagreements and work with each other from a position of mutual respect, and good faith. The nature of such disputes can, and often does bring out the dark nature of our personalities, not our better angels. I sincerely encourage the parties to seek those better angels while complying with this award.]

Respectfully Submitted,

Donald J. Barrett, Arbitrator

Date February 25, 2015