Welcome Motor Vehicle Union Officers, Local Presidents and friends of the Motor Vehicle Craft. Please reference the attached list of Motor Vehicle arbitrations/settlements and annual summary of the MVSD of the Northeast Region.

Recent awards, settlements are intended to provide guidance on how disputes have been settled/resolved, and/or determined in arbitration.

Have a productive educational conference, god bless and please have a safe trip home to your families. Understanding how regional arbitrators interpret the contract and understanding or how we settled crafts specific disputes are crucial elements in the educational process.

The challenge to convert our employees to career and modal HCR to PVS conversions in the NER have been productive, thanks to the assistance of our local craft officials'. A special thanks to John Dirzius for all his support. Please read the following arbitration awards and feel free to contact your NBA for clarity.

Thank You in Unionism and Solidarity

Joseph LaCapria
National Business Agent
Motor Vehicle Service Division; Northeast Region-APWU

REGULAR ARBITRATION PANEL

In the Matter of Arbitration Between	Grievant: Class Action
	Post Office: Boston, MA
UNITED STATES POSTAL SERVICE	Case No. B00V-4B-C 07025979
and	
AMERICAN POSTAL WORKERS UNION	Union No. BO20061723

Before: Timothy Buckalew, Arbitrator

Appearances:

For the Postal Service:

Reguvaran Nair, LRS
USPS
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Brooklyn, NY 11256

For the Union:

Joseph LaCapria, Nat'l Bus. Agent
MVS Division--APWU
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Place of Hearing:	Boston, MA
Date of Hearing:	February 3 and March 8, 2017, Post-hearing briefs, March 14
Date of Award:	April 27, 2017
Relevant Contract Provisions:	Article 7
Contract Year:	2006
Type of Grievance:	Contract, Remedy

AWARD SUMMARY

Monetary relief is an appropriate remedy for a cross-craft Article 7.2 contract violation.

Issues

What is the proper remedy?

RELEVANT FACTS

The facts of the underlying dispute are set out in my award of February 8, 2015, bearing the same caption and case designation. I hereby incorporate that award in its entirety. When the award issued, I retained jurisdiction for ninety days to permit the parties time to resolve the question of the appropriate remedy. For purposes of this decision, I treat the hearing and arguments as a request for clarification of the award. The Postal Service, argues that the Arbitrator should not consider clarifying the award because: a) the Union unduly delayed requesting the Arbitrator's re-involvement in the remedial dispute, and b) the Union failed to prove that the contract violation resulted in any harm to the members of the bargaining unit warranting a monetary award.

The threshold issue at the hearing on remedy focused on the Postal Service's claims that no remedy is warranted because of the Union's delay in pursuing its remedial rights. I address the evidence and arguments associated with what the Postal Service characterized as *laches*. The Postal Service framed this objection as whether the Union should be barred from pursuing the Arbitrator's engagement in the remedial dispute because the award issued on February 8, 2015, but the Union did not request the involvement of the Arbitrator until April 15, 2016.

Laches is an ancient, some might say, moldy, legal defense from civil law originally applied in cases of equity where a defendant sought to bar a plaintiff from seeking equitable relief (an injunction, for example) because the plaintiff's delay in bringing a suit is alleged to have prejudiced the defendant. Typically, a defendant raises the affirmative defense of *laches* asserting that the passage of time itself has caused the loss of witnesses or other evidence favorable to the defendant's case and that the unreasonable delay was a strategy to weaken the defendant's right to raise defenses that it otherwise would have been able to assert.[1] As an equitable defense it is usually limited to cases where a plaintiff is seeking equitable relief and not damages.

At the hearing I denied the Postal Service's defense and reassert that denial in this

[1]. "equity aids the vigilant and not those who slumber on their rights." - Black's Law Dictionary.

award. *Laches* is an inappropriate defense to the Union's attempt to clarify the award because this is a request to clarify a final and binding award granting the Union's grievance. The delay in engaging the Arbitrator did not prejudice the Postal Service's ability to offer a defense to the claim for a money award because the evidence that would have been proffered by the parties regarding individualized harm was not apparently not available in 2015 or in 2017.

Beyond that, the delay in bringing forward this remedial dispute does not appear to rest entirely with the Union. There was testimony that after the award issued the parties had several unfruitful meetings attempting to negotiate a solution to no avail. Ultimately, as I understand the facts, after the normal back and forth, the Postal Service concluded from their interpretation of the award, that no monetary remedy was appropriate because there was no evidence that any identified member of the MVS craft was denied work or overtime opportunities because of the cross-craft violation. That position was informed in some part by management's inability to produce payroll or other records that would permit the determination of who, if any, MVS craft employees were available to work during the hours of operation of the shuttle. I did not conclude that the Union's delay in bringing the remedy issue back to the Arbitrator was unreasonable under the circumstances. I reinforce that decision here.

Finally, it could be argued that the Arbitrator had no jurisdiction here because more than ninety days elapsed from when the award issued until the date the Union proposed bringing the remedy issue back to the Arbitrator. That argument would be more persuasive in an *ad hoc* arbitration tribunal. But as a permanent member of the District arbitration panel, it my responsibility to issue awards consistent with the parties' negotiated collective bargaining agreement and when called on, to clarify the remedy when appropriate. The obligation to hear disputes designated by the parties for the term of my service on the panel overcomes any questions regarding the nature of the arbitrator's continuing obligation, and authority to resolve any disputes over the interpretation and application of an award.

Turning to the merits of the case I find the Union's claim supported, at least in

part.

The bare bones of the facts of this case have not been clarified by the two intervening years.

Union witnesses testified the facts found in the February 8 award were the basis from which Union representatives worked to establish a monetary remedy. From October 2006 to December 2009 while the Back Bay Station was under reconstruction the Postal Service assigned light duty status individuals from the mail carrier craft to drive vans in the morning (0975 to 1200) to shuttle temporarily housed letter carriers from the Boston P & DC to the start location of their regular routes and to retrieve the letter carriers at the ends of their routes (1400 to end of work) in the afternoons to the Boston P &DC. The shuttle driving work did not occupy all the work hours of the letter carriers but did require signing out the the vans from the "A" St. parking area where MVS vehicles normally park and at the end of the day returning the vans to the same parking lot to be checked in.

Scott Hoffman, Local President, testified that the parties met on October 26, 2016 and January 11, 2071. Prior to the October 26 meeting the parties agreed meet within thirty days "to discuss potential remedy" for the February 8, 2015 award. Hoffman made a settlement offer based on time transporting carriers to and from the P&DC (3 x 2.25 hours + 6 hours in the afternoon + 1 hour travel time @ day = 18.75 hours per day x 6 days a week) or 99 hours a week for the period October 2006 to December 2009. At straight time rates, the Union argued for a monetary remedy of $425, 250. The Union argued that this remedy was substantially less than a "fully loaded" liability which the Union argued should include pay at overtime rates, sick leave and other benefits totaling more than $637,875.The Postal Service's representatives, Connie Marvin, Manager Labor Relations, and Micheal Foley met with Hoffman, William Weaver, but did not approve the proposed remedy and did not make a counter offer.

Scott Hoffman testified that the the Union based its remedial claim on the number of members of the bargaining unit, drivers, mechanics and dispatch clerks, on all tours who could have performed the work, and that the total hours was based on the actual

operation of the shuttle vans. The LMOU sets up OTDL's by tour, section and required skills, employees who are willing to work overtime at the tour and another list for those willing to be called back outside their tour at a guaranteed four hour payment. Hoffman also testified the work would be available for light and limited duty employees at the Northwest facility as well as PTR's who could have done the shuttle work and because it was regularized work for three years, senior PTR's who took that assignment would have been eligible for conversion to FTR's. Hoffman testified that management did not request names of specific individuals and that it was understood during negotiations that the Union would have to prove employees were displaced but no one asked the Union to name the MVS craft employees it thought should get the benefit of a monetary remedy.

At one point management indicated that they thought the total should be based on one shuttle or on less hours during the day because the letter carriers driving the vans were not occupied for the entire shift with that function. Hoffman testified that the Union did not have a list of names of individuals that were denied work during the period, but the Union argued that management should have provided information about the MVS craft members available for the work. The Union requested documentation after negotiations broke down attempting to recover the hours worked by MVS TTO's and MVO's during the time the shuttles were running, overtime desired lists for the period and all light and limited duty MVS craft employees showing driving or non-driving status for the same period. In February 2017, management informed the Union that none of the sought-after information was available as the records could not be retrieved.

Manager Marvin testified that she was first approached by representatives of the Union in April, 2016 to discuss the remedy. During subsequent negotiations, the Union presented "abstract numbers" based on the hours of work performed by carriers, etc., but did not produce a list of names of employees harmed by the Article 7 violation.

Marvin explained that management understood the February 8 award to require the Union to show individualized harm to employees: lost wages, lost overtime or displaced from their craft. At the hearing, and in post-hearing arguments, the Postal Service places the burden for proving a monetary remedy on the Union based on the

penultimate paragraph on page 11 of the award:

> "The Union's claim for overtime pay for the lost work is not justified on this record. **To prove a loss of overtime opportunities**, the Union must show that either the work lost was preformed on an overtime basis by the letter carriers, not shown in the evidence, or that motor craft employees affected by the lost work would have been working on an overtime basis, also not shown in this evidence. **To justify a compensatory award, the Union must show that there was lost work (*sic)* displaced craft employees seeking work opportunities during this period…"** [emphasis added]

Because the Union did not provide any concrete examples of MVS employees by name who were denied work, Marvin testified management did not deem a counter-offer necessary, and while management agreed to sign the October 2016 commitment to negotiate over remedy, it did not require the Postal Service agree to the remedy proposed by the Union.

Steve Kennedy, Manager of Transportation Networks, testified there were ten unassigned PTF's working during the relevant period, and that there were approximately 60 employees on the OTDL for all tours. He was not asked to provide a list of MVS drivers who could have driven the vans during Tour 2 hours of operation by the Union after the award issued. He was not aware of any employees on the second tour available for the van shuttle work, but was not aware of the status of any VMF mechanics and admitted that if the request for a drivers had been made he could have made a request throughout the section. MVS clerks could have also been used as drivers and with respect to the overtime available in the section, not all members of the bargaining unit were working up to the limit of twelve hours per day.

Michael Foley, LRS, attended the remedy negotiation meeting and corroborated Marvin's testimony. The Union did not provide a list of names of employees entitled to a monetary remedy and that meant management did not have to make a counter offer under their reading of the award. He acknowledged that the meeting was short and that management did not ask for such information at the meeting.

Discussion-Positions of the Parties

The Postal Service argues that no monetary remedy is appropriate because the Union has failed to meet the proof requirements of the award. While the Union provided information on hours and dollars for the three years when carriers were driving other carriers to work, it did not produce evidence at the hearing or in the remedial meeting with management showing who the employees were who could have performed the work and how many hours each employee would have earned whether regular hours or from the OTDL. The Union did not produce witnesses who had actually harmed or who could have done the driving work. The evidence was not produced as required by the award, therefore the Union failed to meet the requirement of the award and should not be allowed to claim monetary relief here. The Union instead, based its claim on the hours worked by the carriers as collected by MVS President Weaver. The Union's claim is based entirely on its unilateral reading of the award and has nothing to do with identifying employees to be compensated. Pointing out that there were PTF, or limited-light duty employees or clerks who could have driven does not satisfy the award, according to management.

The Postal Service's reading of the award is too literal and ignores the fundamental finding that it has liability for ignoring the MVS craft's jurisdiction over the driving work. The quoted paragraph from page 11 was not intended to be a blueprint for the negotiations over a remedy. The requirement of showing "lost work" is obscured by the missing comma which makes it read as if "lost work" is defined by "displaced employees." The intent of the page 11 paragraph was not to limit the Union's claim by requiring proof that employees were displaced, but to offer examples of how the Union could justify its claim for monetary relief, "lost work" and "displaced employee" being two such routes. The other point, apparently not made with sufficient clarity, was that I could not grant the Union's requested remedy in the award because there was insufficient proof adduced at the hearing to allow me to determine what the overtime losses were incurred. That the evidence of employee damages was not in the record has been interpreted to mean that the Arbitrator did not see the violation as warranting any remedy

unless the Union could offer up contemporaneous individual grievances of employees demanding the driving work being performed by carriers. That was not the intent of the award.

The Union did not sit on its rights in this case, but promptly filed a grievance on November 17, 2006, contesting the assignment of letter carriers as van drivers to transport other carriers. Management was on notice that the Union claimed the work and took the risk that any grievance would be resolved in its favor knowing there was a national level award from Arbitrator Snow preserving work that was primarily and functionally driving to the MVS craft. The sirens call of efficiency resulted in management not even attempting to solicit drivers from the MVS craft. There is no dispute that in 2006 there were PTF employees in the craft who could have driven vans; there is no dispute that no canvas was made of the MVS tour or section to gauge the availability of employees who may have wanted the assignment on a straight or overtime basis.

In many respects, this case has the same practical remedial difficulties as found in Article 7 grievances challenging the failure to convert a senior PTF clerk arising under the previous contract. Because those cases frequently involved employees who suffered no loss of work, but instead lost out-of-schedule pay, lack of regular NS days, etc., management and the Union frequently disagreed on whether a make whole remedy was appropriate. In B00C-1B-C 04051900 (2004), I concluded that where the Union made out a prima facie case in a "failure to maximize" Article 7 case, there was also a prima facie case of harm "both to the Union and to the employee who has lost the benefit of the bargain negotiated on his or her behalf." I also emphasized that the purpose of a make whole remedy is not to penalize or punish the Postal Service, but "to place the harmed party in the position he or she would have been in had the agreement been followed."

The problem with the implementation of a monetary remedy in this case is not that the Union has not produced individuals who were harmed by the three-year loss of work to the carrier bargaining unit. The problem is practical. This grievance was a class action from the outset, filed on behalf of unnamed members of the bargaining unit

(including at the time one or more PTF, and some working limited and light duty). The Union investigation focused on the hours of work being performed by carriers, the loss to the unit, and not the identity of members of the MVS craft who lost that work (at straight or overtime rates). By the time the case advanced to arbitration several years later the focus of the parties was the right of the MVS craft to claim the driving work. The Union did not demonstrate overtime loss on a one-to-one basis because the evidence showed the carriers worked on a straight time basis. That does not mean the Arbitrator concluded there was no monetary damage to the Union or individuals in the unit.

The Union established a prima facie case that Article 7.2 was violated from October 2006 to November 2009 and that violation is undisputed here. The Union and its members lost the benefit of Article 7.2 protecting the work done in different crafts for the members of the respective bargaining unit. The language quoted by the Postal Service appears to limit the Union's options for recovery but other language in the award was intended to make clear that the loss of that work to the other bargaining unit could justify a monetary remedy. There was no intention to require the Union to produce employees to testify that they were seeking the van driving work in 2006--an impractical, if not impossible requirement. Additionally, the award remanded the question of remedy to the parties to determine "what remedy" is appropriate, a signal that the Arbitrator found that a remedy of some sort could be found. If the award had been limited to a "cease and desist" order, the award would have expressly stated that there was no monetary remedy. A cease and desist remedy would not adequately repair the losses incurred by the bargaining unit and the Union and would have no cost repercussions to deter similar contract violations.

The record shows that in November 2006 the Postal Service identified the carriers driving the shuttle vans. Two were light/limited duty carriers; three were PTF's. The Union suggests a one-for-one hourly value as the basis for the remedy. That remedy would not reflect exactly the lost opportunities experienced by the MVS craft, but is a practical starting point for finding a remedy that reflects the loss that can't be entirely recovered now because of the age of contract violation.

I decline to fix final monetary relief because the goals of the parties in such negotiations may include matters outside the scope of this award. I direct the parties to resume discussions on the remedy based on the understanding that a monetary settlement does not have to identify specific employees to be compensated.

Award

A monetary remedy is is proper and ordered based on straight time hours and excluding compensation for holidays, out-of-schedule premium or other benefits.

Respectfully submitted,

Timothy J. Buckalew, Arbitrator

REGULAR ARBITRATION PANEL

In the Matter of Arbitration Between	)	Grievant: Class Action
	)	Post Office: Boston
UNITED STATES POSTAL SERVICE	)	Case No:B00V-4B-C 07025979
and	)	
AMERICAN POSTAL WORKERS UNION	)	Union No. BO20061273

Before: Timothy Buckalew, Arbitrator

Appearances:

For the Postal Service: James Lloyd, Labor Relations Specialist
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For the Union: Joseph LaCapria, National Business Agent
APWU Motor Vehicle Craft
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Place of Hearing:	Boston, MA GMF
Date of Hearing:	June 6 and November 4 2014
Briefs Filed:	November 13, 2014
Award Issued:	February 8, 2015
Relevant Contract Provisions:	Article 7,§2 , LMOU, Article 20
Contract Year:	2006
Type of Grievance:	Contract

AWARD SUMMARY

The Postal Service violated Article 7 of the National Agreement by assigning letter carriers to drive passenger vans transporting other carriers to and from their temporary location at the Boston P&DC to their regular delivery routes.

ISSUES

Did the Postal Service violated the National Agreement or the Local Memorandum of Understanding when Letter Carriers were assigned to shuttle other Letter Carriers to and from the Boston Processing and Distribution Center to their Back Bay routes? If so, what shall be the remedy?

Relevant Contract Provisions

ARTICLE 3

MANAGEMENT RIGHTS

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:
A.To direct employees of the Employer in the performance of official duties;
B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
C. To maintain the efficiency of the operations entrusted to it;
D. To determine the methods, means, and personnel by which such operations are to be conducted;
E. To prescribe a uniform dress to be worn by designated employees; and
F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

[. . .]

Article 7.2 Section 2.

Employment and Work Assignments

A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken:

1. All available work within each separate craft by tour has been combined.
2. Work of different crafts in the same wage level by tour has been combined.

> The appropriate representatives of the affected Unions will be informed in advance of the reasons for establishing the combination full-time assignments within different crafts in accordance with this Article.
>
> B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employee's knowledge and experience, in order to maintain the number of work hours of the employee's basic work schedule.
>
> C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.
>
> [See Memo, page 288]

RELEVANT FACTS

Bill Weaver, MVS Craft President, filed this grievance on November 17, 2006, alleging that local management had violated the National Agreement and the Local Memorandum of Understanding by assigning members of the Letter Carrier union to drive Letter Carriers from the Boston P&DC to and from their assigned routes. The Back Bay carriers had been displaced from the Back Bay Station while it was renovated over a several year period and were temporarily housed in a section of the Boston P&DC. The distance between the two facilities was approximately two miles--the distance to the four drop off points varied from 1.6 to 1.8 miles (10-15 minutes travel time in non-congested traffic conditions). According to records provided Weaver by Richard Hickey, STO, there were three shuttle passenger vans in operation in continuous operation from 0975 to noon to deliver carriers to their Back Bay routes. In the afternoon, the vans would retrieve the carriers starting around 1400 until all carriers were retrieved and returned to the P&DC. According to the response to Weaver's request for information, two carriers were designated

as Drivers, and three PTF Back Bay carriers also drove the vans.

According to testimony from Ed Davis, the former Manager of the Back Bay Station, the operators of the vans were all licensed Massachusetts drivers and all were working in Light Duty status. Davis testified that when the carriers were displaced from the Back Bay Station, it was necessary to arrange some mechanism to transport the carriers to the normal starting points for their walking routes. He testified that he considered deployment of carriers on restricted duty as van drivers to be an efficient way to ensure continuity of mail delivery while the station was undergoing a protracted renovation and rebuilding operation. Davis had never supervised any MVS craft employees and did not have any experience with the MVS craft contract or LMOU. Although he was the manager who arranged to have carriers operate the shuttle service he was not involved in the grievance and was not queried before the Step 2 answer to the grievance was issued by Steven Kennedy, Manager of Transportation and Networks at the time.

Weaver testified that he pressed the grievance because MVS craft members had operated vans transporting employees from remote parking lots to the Boston P&DC facility and he believed that a National Panel arbitration award by Arbitrator Carlton Snow, H7N-1A-C 25966 (1993), established that transportation of employees was the work of the MVS craft. Weaver also relied on language in Article 20 of the MVS craft LMOU, paralleling and referencing Article 20 of the National Agreement covering the provision of bus service from the "A" Street parking lot and the GMF and the J.W. McCormack federal building would be provided when possible. Weaver testified that the vehicles from the parking lots to the named facilities were driven exclusively by MVS craft employees. including passenger vans used to

transport carriers to the McCormack building because that building would not accommodate bus-size vehicles. Operators of the buses are required to have a bus operator license endorsement. The endorsement was not required to operate the passenger vans with a capacity of less than fifteen passengers. Weaver states that in grievance discussions, management did not dispute that transporting employees by bus was a MVS function, but that because passenger vans were being used, the prior precedent did not control this operation. Weaver testified that there were MVS craft employees available and qualified to drive the passenger vans for the duration of the Back Bay shuttle van operation. At Step 1, management argued that that the shuttle work did not amount to an eight hour duty assignment, that the shuttle vans did not require a CDL license and that the work was being provided restricted duty employees.

Weaver pursued the grievance to Step 2 where Kennedy denied the grievance stating, "The temporary relocation of Back Bay letter carriers to the Boston P&DC has brought about the need to have the carriers transported back to their respective routes. It has been a past practice to have letter carriers transport themselves out to their routes. The letter carriers performing this work are also performing other letter carrier duties in the office such as setting up routes. This method of transport is the most effective and efficient way to perform this work."

In January, 2007 the Union appealed the grievance to Step 3. In March, 2007 the grievance was denied on the ground that the grievance lacked "specificity and substance", and stating the Union failed to make a contractual basis for the grievance.

POSITIONS OF THE PARTIES

The Union asks the Arbitrator to uphold the grievance. The Step Two denial argues that the transportation of letter carriers by passenger vans driven by letter carrier craft employees is not a violation because it is consistent with a past practice that carriers would drive themselves to their routes, or sometimes take a letter carrier as ride-along if they were driving to a route from the Back Bay Station. That is simply not the same as the facts shown here: letter carriers being assigned to drive van loads of letter carriers to and from the P&DC. The fact that a CDL was not required to drive the passenger vans is not determinative. MVS craft employees have historically transported Postal Service employees from the parking lots to the P&DC, the McCormack building and other installations, in buses that required a Bus License endorsement to a CDL, but also in passenger vans where that endorsement is not required.

The Union argues the ownership of the transportation of Postal Employees is confirmed in Arbitrator Snow's award denying the NALC grievance contesting the assignment of letter carrier transport duties exclusively to the Motor Vehicle Operator Craft. The Union asks the Arbitrator to grant the grievance and retain jurisdiction over the remedy needed to make craft employees whole for the loss of work.

The Postal Service denies that the Union has proven a contract violation.

Management does not dispute using letter carriers to shuttle other letter carriers to their routes from the Boston P&DC while the Back Bay Station was being renovated. Contrary to the Union, nothing in the contract expressly assigns this work to the MVS craft and the Postal Service argues that the balance of the Union's argument is unconvincing.

The Postal Service rejects the Union's reliance on Arbitrator Snow's 1992 award. The best that can be said of this award, according to management, is that the award upholds the discretion of the Postal Service to assign work to its crafts as it sees fit. That case is factually distinguished from the Back Bay carrier grievance because Snow's decision turns on the type of vehicle in use-- a commercial bus on loan from the city the operation of which required the bus driver endorsement on the driver's CDL. The letter carriers here were transported in a plain old passenger van driven by an employee with a regular operator's license. It would have been wasteful to take operators away from vehicles requiring a CDL to move the mail in larger, heavier vehicles. Equally important, Arbitrator Snow rejected the Union's reliance on past practice to require management use only MVS craft employees to drive vehicles transporting other employees. The Union's claim to ownership of this work can't prevail based on alleged past practice because the transportation of off-duty employees from the employee parking lot to the P&DC also used multi-axel buses, while in this case, the letter carriers were on-the clock as getting to their routes is part of their regular work duties and was no different than when letter carriers sometimes

are transported in a two ton letter carrier vehicle. This work is the same as when a carrier transports themselves and another carrier to a route or routes and does not give rise to MVS craft jurisdiction. The disputed assignments were not limited to transporting other letter carriers but also included deliver of Express Mail, casing mail at the P&DC, and making deliveries to apartment houses. Finally, the Postal Service argues that the assignment of light duty/limited duty letter carriers to this work is consistent with Article 13 and the ELM's recognition that cross-craft assignments are acceptable for employees working under medical restrictions.

The Union failed to introduce any evidence of loss of work or other damages for any MVS craft employee. There was no reduction in the number of MVS employees or loss of scheduled work. The payment of overtime is unjustified because the letter carriers driving the vans were paid on a straight time basis. The Union's grievance would penalize management for devising a legal, efficient and economical way to overcome a temporary obstacle to normal operation of the letter carrier functions by using available, qualified letter carriers to perform driving functions that were part of their normal duties.

Discussion

The key to this case is found in Arbitrator Snow's National Panel decision. As noted by management, Snow rejected the claim of the NALC that there was a binding practice requiring management to post temporary assignments driving dislocated carriers to their routes with the driver having no direct role in the

delivery of mail. The fact that the carrier/drivers had other functions used to fill their time between split hours of shuttle van operation does not seem material. The primary function of the driver was to move the letter carriers dislocated from the Back Bay Station from the P&DC to their start points and to retrieve them at the end of their deliver routes. They did not deliver mail from the vans, although that may have been a secondary function as management saw opportunities to use the van drivers to facilitate other delivery functions does not detract from the fact that they were regarded as drivers and that the shuttle vans were provided to transport carriers, not the mail. The functional analysis followed by Arbitrator Snow from the facts adduced in the 1992 case still seems sound and valuable here. Article 3 guides management's overall mission, but must be read harmoniously with Article 7's commitment to preservation of work along craft lines recognized in the parties' National Agreement.

Management did not create full time, if temporary, duty assignments as the needs of the service required split operational hours, but that does not excuse the assignment of transportation of employees to letter carriers, if the transportation function is the primary function of the MVS craft. Management argues that it was relieved of responsibility for assigning this work to MVS craft employees because the vehicles used did not require a CDL or special endorsements and thus it was more efficient to hold MVS drivers for functions requiring higher level driving licenses. Holding a CDL is a prerequisite for many MVS craft positions, but not every MVS craft position requires higher level licenses. Weaver testified

that driving vans of postal employees to and from the McCormack station was recognized in the local agreement as MVS craft work, and that is not disputed. The function of the position, not the license or the number of axles of the vehicle has been the guiding principle in determining which craft should be assigned work.

Adherence to the functional principle in assigning work leads me to the same conclusion as Arbitrator Snow: driving duties are ancillary to letter carrier functions; the primary function of the disputed position in this case involved transporting letter carriers to their routes with the driver having no direct role in the delivery of the mail; driving is fundamental to duties of the MVS craft. The twice daily operation of shuttle vans to move carriers from the P&DC to their routes and back to the P&DC at the end of their shift should have been assigned to members of the MVS craft.

The fact that some of the temporary drivers were on working in limited/ light duty status does not by itself excuse cross craft assignment. If the Union establishes that work is in its craft jurisdiction, the burden of showing a limited duty exception to Article 7 shifts to management to show that it exhausted all possibilities of assignment within the carrier craft and an adherence to the pecking order in ELM 546 Merely stating that there was a limited duty justification for assigning the carriers MVS craft work is not sufficient. See National Panel case, HOC-3N-C 418 (Snow, 1994); B00C-4B-C 03157903 BO20030057 (Buckalew, 2003) That it was efficient and allowed fuller use of the limited duty carriers

cannot justify the assignment of driving functions where there is no showing the carriers were not already occupied with carrier craft work. The record shows that Davis made a rational business decision to use some letter carriers that were on light duty and others in PTR status to drive without any consideration of the cross craft implications of the assignments.

The Union's claim for overtime pay for the lost work is not justified on this record. To prove a loss of overtime opportunities, the Union must show that either the work lost was performed on an overtime basis by the letter carriers, not shown in the evidence, or that the motor craft employees affected by the lost work would have been working on an overtime basis, also not shown in this evidence. To justify a compensatory award, the Union must show that there was lost work displaced craft employees seeking work opportunities during this period. The grievance is remanded to the parties to determine what remedy is appropriate. The Arbitrator retains jurisdiction for ninety days to assist in the determination of a remedy.

The other contract claims raised by the Union were not proven and are dismissed.

AWARD

The grievance is allowed. The Arbitrator retains jurisdiction for ninety (90) days to permit the parties to resolve the question of what remedy is appropriate under the contract.

Respectfully submitted,

Timothy J. Buckalew, Arbitrator

REGULAR ARBITRATION PANEL

In the Matter of Arbitration Between	Grievant: Class Action
	Post Office: Boston, MA
UNITED STATES POSTAL SERVICE	Case No. B00V-4B-C 07025979
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AMERICAN POSTAL WORKERS UNION	Union No. BO20061723

Before: Timothy Buckalew, Arbitrator

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Reguvaran Nair, LRS
USPS
1050 Forbell St., RM 2015-3
Brooklyn, NY 11256

For the Union:

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Place of Hearing:	Boston, MA
Date of Hearing:	June 29, 2017
Date of Award:	June 29, 2017
Relevant Contract Provisions:	Article 7
Contract Year:	2006
Type of Grievance:	Contract, Remedy

AWARD SUMMARY

Monetary relief is an appropriate remedy for a cross-craft Article 7.2 contract violation. The appropriate monetary relief here is $280,322.00 due upon issuance of the award.

Issues

What is the proper remedy?

RELEVANT FACTS

The facts of the underlying dispute are set out in my awards of February 8, 2015, and April 27, 2017, bearing the same caption and case designation. I hereby incorporate the facts findings and arguments memorialized in those awards in their entirety into this Opinion and Award. The parties appeared before the Arbitrator on June 29, 2017 when unable to resolve the question of the Postal Service's monetary obligation in light of my prior decisions.

After consideration of all the evidence and arguments, I find the Postal Service's liability for the cross-craft violation found in the previous awards is $280,322.00.

Award

The Postal Service liability for the violation of the contract is $280,322.00. One third (.333) of the liability is assessed at the hourly rate of $18.75; two thirds (.666) of the award is assessed at the hourly rate of $24.00.

Respectfully submitted,

Timothy J. Buckalew, Arbitrator

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	§	
	§	**Grievant: Lurock Rosaiva**
between	§	
	§	**Post Office: Kearny, NJ**
UNITED STATES POSTAL SERVICE	§	
	§	**Case No. B10V1BD16031863--**
and	§	**NJD15501**
	§	
AMERICAN POSTAL WORKERS UNION, AFL-CIO	§	
	§	

BEFORE: Irene Donna Thomas, Arbitrator
APPEARANCES:

For the United States Postal Service: James Tee, Labor Relations Specialist, 21 Kilmer Road, Room 106; Edison, NJ 08899-9998

Witnesses: Mark Viggiano, United States Postal Inspector
Anthony Gonnella, Manager Transportation
Emad Zaki, Transportation Manager

For the APWU: Joseph LaCapria, National Business Agent, APWU, 5 N. Village Avenue, Suite 3, Rockville Centre, NY 11570

Witnesses: Rickey Smith, Shop Steward
Lurock Rosaiva, Grievant

Place of hearing: 850 Newark Turnpike, Kearney, NJ

Date of hearing: May 23, 2017

Record closed: May 31, 2017

Date of award: June 15, 2017

Contract Article(s): 16

Contract Year: 2010 - 2015

AWARD SUMMARY

The grievance is sustained. The employer violated national agreement in the manner of issuing the emergency placement to the grievant where the suspension was based upon a "command decision" by a higher level official. The grievant is entitled to full back pay and all other benefits of employment "make whole" due to the emergency placement.

Irene Donna Thomas, Arbitrator

INTRODUCTION

Pursuant to the grievance-arbitration procedures between the United States Postal Service and the American Postal Workers Union, AFL-CIO, the undersigned arbitrator was selected to hear and decide the dispute described herein and to render a final and binding Opinion and Award. The union filed this grievance alleging that the employer violated the national agreement when it issued the grievant an emergency placement.

The arbitration hearing opened before this arbitrator on May 23, 2017 at 850 Newark Turnpike, Kearny, NJ at which time both parties were provided with an opportunity to offer the testimony of sworn witnesses, to make arguments and to submit documentary evidence in support of their respective positions. The parties' arguments and submissions were carefully considered in rendering the following Opinion and Award.

ISSUE

The employer stated the issue as "did the Postal Service have just cause to place the grievant on emergency placement off duty status on November 7, 2015 for making threatening statements to our transportation manager Kamal Khalil? If not, what should the remedy be?"

The union stated the issue as "did the Postal Service violate the collective bargaining agreement in the manner of issuing the emergency placement to Lurokc Rosaiva on November 7, 2015."

After careful consideration of the parties' competing issue statements, the sworn testimony and the documentary evidence, I find that the appropriate issue for resolution is

the one cited by the union.

STIPULATIONS

1. The period for the emergency placement is November 7, 2015 to February 5, 2016.[1]

THE MATERIAL FACTS

On November 7, 2015, the employer issued Lurock Rosaiva, the grievant in this matter, an Emergency Placement in Off Duty Status. The grievant is a tractor-trailer driver for the United States Postal Service and he also has a second job buying and selling cars. He notice informed Mr. Rosaiva that he would remain in this status until he was advised otherwise. The employer stated that the reason for the emergency placement was "[t]o investigate an alleged Verbal threats [sic] towards Supervisor [Kamal] Khalil by you."

This incident began around February 2015 when the grievant worked extra hours and, according to his testimony, he should have been paid for 14 hours. Mr. Rosaiva believed that "someone went in the system and put that he worked 7 hours instead of 14 hours." In February 2015, Mr. Rosaiva informed Khalil that he had not been paid correctly. On July 22, 2015, the grievant was involved in a work related injury. Between July 2015 and November 1, 2015, the grievant was out of work due to the injury.

On November 2, 2015, Mr. Rosaiva returned to work. He made several attempts to resolve his compensation issues with Khalil but was unsuccessful. The grievant informed his shop steward that Khalil was trying to "screw" him out of his compensation and by assigning

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[1]The parties questioned whether the employer paid Mr. Rosaiva for the contractual 30 day period before his removal.

him six additional STC runs.

According to the testimony of Emad Zaki, Transportation Supervisor, on November 6, 2015, the grievant approached his office and asked to speak to him in private. They walked to the back of the garage. Then, the grievant announced that Khalil was "fucking with him" because he put the grievnat back on the STC run knowing that he was injuried. Mr. Rosaiva also complained that Khalil did not pay him for his sick leave. Mr. Zaki testified that the grievant told him, "I had someone run his plates and I'm going to have someone pay him a visit. He wants to take me out? I'll take him out before he takes me out." Mr. Zaki further testified that Rosaiva said, "if he was back home (Haiti), Khalil would be dead now."[2]

When Zaki and Rosaiva walked to the front of the facility, they encountered Ricky Smith, a shop steward. The three went to Zaki's office to "calm" the grievant down. After the grievant became calm, Zaki was worried about the way the grievant was talking and, therefore, asked a co-worker supervisor what to do. He was told to tell the manager about the situation. So, he waited until Khalil came to work in the morning and told him what happened. After speaking to Khalil, Zaki called Transportation Manager Anthony Gonnella. Gonnella told Zaki to call postal police. He did. Ultimately, the Postal Inspector issued the emergency placement notice in off duty status to Mr. Rosaiva.

The union filed a grievance protesting the emergency placement. The grievance went

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[2]Zaki informed postal inspectors during an interview that the grievant showed him his mobile phone which contained a picture of a document alleged to contain information such as Mr. Khalil's address, date of birth, and social security number. Mr. Zaki did not provide this information in his sworn testimony.

through the grievance procedure without resolution.[3] On March 25, 2016, the union appealed this grievance to arbitration from Step 2.

DISCUSSION AND ANALYSIS

Article 16.7 of the national agreement provides that "[a]n employee may be immediately placed on an off-duty status (without pay) by the Employer, but remain on the rolls where . . . "the employee may be injurious to self or others." Article 16.7 of the parties' JCIM explains that the purpose of Article 16.7 is to allow the Postal Service to act "immediately" to place an employee in an off-duty status in the specified "emergency" situations.

In a national level arbitration decision interpreting Article 16.7, Arbitrator Mittenthal announced that

> The 'emergency procedure' is, as those words indicate, a recognition that situations do arise where supervision must act 'immediately' in suspending an employee because of immediate risks or dangers which do not allow the more time-consuming procedures of Sections 4 and 5. Thus, Section 7 is a permissible variation from the conventional suspension contemplated by the parties. But it is a suspension nonetheless, one which must be considered an integral part of the Article 16 'discipline procedure.'
>
> My conclusion, accordingly, is that a Section 7 suspension should in appropriate circumstances be regarded as discipline. * * * *

In the Matter of the Arbitration of Burch, et. al., H4N3UC58637, H4N3AC59518 (1990).

Arbitrator Mittenthal also settled that if an emergency placement is based on the alleged

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[3]The record shows that the parties made attempts to reach a settlement of this grievance. These attempts have not been considered in the resolution of this grievance.

misconduct of an employee, management is subject to a "just cause" test. He explained that

> Section 7 grants Management a right to place an employee "immediately" on non-duty, non-pay status because of an "allegation" of certain misconduct (or because his retention "may" have certain harmful consequences). "Just cause" takes a different cast in these circumstances. The level of proof required to justify this kind of "immediate . . ." action may be something less than would be required had Management suspended the employee under Section 4 or 5 where ten or thirty days' advance written notice of suspension is given. To rule otherwise, to rule that the same level of proof is necessary in all suspension situations, would as a practical matter diminish Management's right to take 'immediate. . ." action.

Id. at 9.

The question here is whether the employer properly issued the emergency placement. To support an emergency placement, the employer need only "allege" that the grievant may be harmful to himself or others. But, the allegation must be supported by some semblance of "just cause." The grievant flatly denies making any threats toward or about Khalil. However, the record supports the employer's "allegation." There is a sworn statement in the record from Emad Zaki reciting that Mr. Rosavia told him that he would "take him out before he take[s] me out" and that "if this guy was back home, he'd be dead by now." This information coupled with Mr. Rosavia's possession of personal DMV information for Mr. Khalil on his mobile phone and his having two registered weapons, was sufficient to support the Article 16.7 allegation.[4] But, because an Article 16.7 placement is based solely upon an allegation, with some low level of support, this arbitrator does not make findings of fact concerning

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[4]This is not to say that the information was sufficient to support an Article 16.1 just cause analysis.

whether the grievant actually *made* the statements alleged or if he actually threatened Khalil.

The union argued that because the employer did not "immediately" put the grievant on an emergency placement after he uttered the alleged threat, the action is procedurally defective and, thus, must be vacated. The national agreement permits the employer to use Article 16.7 in situations where immediate action is required. It is the immediacy of the action that separates Article 16.7 from Article 16.5, for example. In this case, I find that the required immediacy was met under the circumstances of this case. He was emergency placed at 00:05 a.m. on November 7, 2015.

But, this does not end the matter. The record shows that Zaki placed the grievant on emergency placement due to a "command decision." Mr. Zaki admitted on cross-examination that Anthony Gonnella, a higher level superior, told him to put the grievant on an emergency placement. The employer argued that in this case, Zaki did not know what to do so, because he was a relatively new supervisor, so he brought the matter to Gonnella's attention. The fact that Zaki and Gonnella conferred about the issuance of discipline does not invalidate the action, the employer argued.

Article 16.8 of the national agreement provides that "[i]n no case may a supervisor impose suspension or discharge upon an employee unless the proposed disciplinary action by the supervisor has first been reviewed and concurred in by the installation head or designee." In *Matter of the Arbitration between USPS and National Rural Letter Carrier's Association,* E95R4ED01027978 (2002), Arbitrator Eischen put to bed the question of whether a "command decision" violates this language of the national agreement. He held that "the very

heart and core of Article [16.8], is violated when the reviewing/concurring official 'commands' or 'dictates' the disciplinary action to the proposing official, when the higher authority merely 'rubber-stamps' the disciplinary action proposed by the employee's supervisor and/or when the sequential steps of a separate and independent supervisory initiation, followed by a separate and independent higher authority review/concurrence, are merged into a single consolidated joint decision by the two managers to suspend or discharge the employee." *Id.* at 20. As the employer observed, Arbitrator Eischen also held that [Article 16.8] does not bar the lower level authority from communicating with higher management to discuss policies, options, and other factors ... before determining whether, and to what extent, to propose suspension or discharge of an employee." *Id.* at 21. The key, however, is that the initiating official must retain "independence of judgment and is not commanded by higher authority to issue the discipline." *Id.* The remedy for these violations, Arbitrator Eischen held, is to "invalidate the disciplinary action." *Id.* at 23.

> Because these are substantive violations which effectively deny an employee the due process rights granted by [Article 16.8], persuasive proof of such fatal violations requires arbitral reversal of the improperly imposed suspension or discharge, without consideration of the underlying merits of the disciplinary action, i.e., reinstatement with "make whole" damages.

Id.

In this case, as shown above, the record contains persuasive proof that a higher level official issued a "command decision" to issue the grievant an emergency placement. Zaki explicitly admitted this fact on cross-examination. Moreover, after he was told to issue the

emergency placement, he admitted that he wrote the letter and handed it to postal inspectors for implementation. Therefore, regardless of the merits of the underlying emergency placement, this arbitrator is required to invalidate it. Accordingly,

AWARD

The grievance is sustained. The employer violated national agreement in the manner of issuing the emergency placement to the grievant where the suspension was based upon a "command decision" by a higher level official. The grievant is entitled to full back pay and all other benefits of employment "make whole" due to the emergency placement.

Dated: June 15, 2017

Irene Donna Thomas, Arbitrator

REGULAR DISTRICT ARBITRATION PANEL
New York Metro District

In the Matter of an Arbitration	Grievant:	Class
Between	Post Office:	Morgan P&DC
United States Postal Service	Case No.:	B10V-1B-C15360288
And	Local No.:	16003
American Postal Workers Union	Before:	Robert Tim Brown, Arbitrator

Appearances:

For the Postal Service: Chane Davis, Labor Relations Specialist

For the Union: Joseph LaCapria, National Business Agent

Place of Hearing: Morgan P&DC

Date of Hearing: August 11, 2016

Date of Award: September 23, 2016

Relevant Contract Provisions: Article

Contract year: 2010

Type of Grievance: Contract (Bidding)

Award Summary:

The grievance is sustained as detailed herein. .

Robert Tim Brown

cc: Joseph LaCapria, Chane Davis, Arbitration Processing Center, Area Labor Relations Specialist (Windsor), John Dirzius

AWARD

The undersigned heard this case under the auspices of the New York Metro Regular Arbitration Panel established to resolve contractual disputes between the United States Postal Service and the American Postal Workers Union, AFL-CIO. Hearing was held on August 11, 2016 at the Morgan P&DC. The Service was represented by Labor Relations Specialist Chane Davis, and the APWU and the Grievants by APWU National Business Agent Joseph LaCapria. The parties presented witnesses and argument. I have thoroughly reviewed the file and the applicable ELM and National Agreement provisions, and hereby render this award.

The issue was:

> Did the Service, in October, 2015, violate the National Agreement by posting for bid fewer vacancies than were specified in the employee complement, and, if so, what shall the remedy be?

FACTS

This motor vehicle facility employs various mechanical employees in specific assignments, all bid jobs, and each year, bidding opens up for certain vacancies and job changes that are available. Ordinarily, the assignments that are up for bid are those which have been in existence up to just before the list is posted.

During the course of any year, the Service has two avenues available should it wish to eliminate positions. If an assignment is vacated for any of a number of reasons (e.g, employee transfers out, retires, is promoted, dies) the Service may "revert" the position by posting and notifying the Union, all meeting a very limited and specific time deadline. If it does not satisfy the reversion procedure in a timely fashion, it is required to post the assignment for bid within a specified time, and then fill it according to contractual requirements.

The Service may also, during the course of any year, "abolish" an assignment by notifying the incumbent employee, posting, and notifying the Union. The incumbent is not terminated, but rather becomes an unassigned regular employee who may have bidding rights on other jobs in that facility or elsewhere.

Neither of these job elimination procedures need be explained in further detail because neither occurred in this case, and it suffices to say that under each procedure, the

Union has certain limited contractual remedies to challenge the Service's action. Instead, when the Service posted the annual bidding list, it posted fewer assignments than had existed up to that point, and the Union grieved, asserting that the elimination of assignments in conjunction with the annual bidding round was not a permissible way for the assignments to be eliminated. The Service, to the extent that it responded in the grievance procedure, defended its actions by asserting that it did not have authority from the Area management to maintain any more assignments than it had posted. It did not, during the grievance procedure, articulate a contractual basis for retrenching in this particular manner.

The file established that there were37 vacancies in the motor vehicle craft at the beginning of 2015, and none of the vacancies were abolished or reverted between that time and October 2015 when the annual posting/bidding was begun. When the postings were promulgated, only 14 of these positions were posted. The Union grieved and met with the Service at step 1, and then appealed timely to step 2. The Union and the Service agreed, as statements from the Union and the Service showed, to a 30 day extension beginning December 3, 2015. The last day of that extension was January 2, 2016,, and the file established that when the Union filed its step 3 appeal on January 4, 2016 the Service's answer had not been filed.

The Union argued, and produced official memoranda in support, that the step 2 answer may not be issued once the deadline passes, and the consequence of that is that new argument added after that time is barred by the well-established rule that late-submitted evidence is not admissible. The file, nevertheless, included that answer and I note that in sum, it asserted that the facility lacked authority to retain the full number of positions because higher level authority (the Area) had not granted permission. It also asserted that a letter had been sent reverting the positions.

There was such a reversion letter in the case file, but it was dated January 5, 2016, long after the disputed bid posting and many months after the 28-day deadline for reverting a position after it becomes vacant.

At the request of the Union I rejected the step 2 answer, while noting that its contents would not have furthered the Service's argument anyway.

The Service also requested that the case be continued so as to permit the presentation of a management witness who was unavailable. It made the representation that the witness would be testifying along the lines of the rejected step 2 answer. I rejected that request.

CONTRACT PROVISIONS, DOCUMENTS

August 3, 1993 MEMORANDUM FOR MANAGERS. TRANSPORTATION AND NETWORKS SUBJECT: Bid Posting Requirements - Motor Vehicle

This memorandum is in response to inquiries from the APWU Motor Vehicle craft in reference to a possible misapplication of contractual procedures with regard to bidding procedures and the abolishment of duty assignments.

We have been informed that some managers are using the bidding process to abolish duty assignments by not posting them. The bidding process is not intended nor should it be used as a procedure, to abolish duty assignments. This is not in compliance with the contractual provisions we mutually agreed to with the union.

If there is a duty assignment that is no longer needed, please use the correct provisions of the collective bargaining agreement to implement such a decision. Do not wait to abolish duty assignments but implement the procedures outlined in Article 39.2.A.1, Posting. If a reassignment is required use the procedures in Article 12.5.C.7.

If there are any questions, please contact your local labor relation's office for guidance. Thank you for your cooperation and assistance in this matter.

October 1, 1993 Memorandum (same subject)

This memorandum is in response to discussions with the APBU Motor Vehicle craft regarding a possible misapplication of contractual procedures with regard to once a year bidding procedures and the abolishment of duty assignments.

It has come to our attention that some managers are using the once a year bidding process to abolish occupied duty assignments, by not posting them. For example, there are 150 duty assignments in the facility when the union requests

that all jobs be posted in accordance with the once a year bidding process. Management then takes this opportunity to abolish 10 jobs by posting only 140 duty assignments during that once a year bidding process. The once a year bidding was not intended, nor should it *be* used as a procedure to abolish occupied duty assignments.

The following procedures must be used to abolish duty assignments when no longer warranted: document the lack of • need for the assignment; notify the individual in the duty assignment as well as the local union official of the *plans* and reason to abolish the assignment; and give the effective date. On the effective date, the majority of work in the duty assignment should disappear and the employee becomes at unassigned regular subject to terms of the collective bargaining agreement.

Do not wait until the bidding cycle to abolish unneeded duty assignments in the craft. Action should be taken as soon as the assignment is no longer needed. Further, if the need to abolish a duty assignment is concurrent with a requested once a year bidding, flake sure to still follow the procedures outlined above prior to the bidding.

MEMORANDUM OF UNDERSTANDING

BETWEEN THE UNITED STATES POSTAL SERVICE

AND THE AMERICAN POSTAL WORKERS UNION, AFL-CIO

e: FILLING OF RESIDUAL VACANCIES

* * *

II. Motor Vehicle Craft

ART. 37.3.a2

2. Reversion. When a vacant duty assignment is under consideration for reversion, the local Union President will be given an opportunity for input prior to a decision. The decision to revert or not to revert the duty assignment shall be made

not later than 28 days after it becomes vacant and if the vacant assignment is reverted, a notice shall be posted advising of the action taken and the reasons therefor.

In the Motor Vehicle Craft, residual duty assignments will be filled by application of Article 39.1.8.6, Article 39.1.8.7 and Article 39.2.A.11. The filling of residual vacancies in accordance with these Articles will be by converting PSEs working in the same position as the residual vacancies (Mechanic, Technician, TTO or MVO) in the same installation.

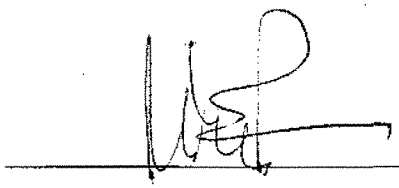
DISCUSSION

As in any contract case. The Union here had the burden to prove that there had been a violation of the National Agreement. It seems clear that it succeeded in doing so. Unquestionably, the Service was required at the time of the annual bidding, to post the list of vacancies as it existed at the time, and did not have the right to omit a group of employees from the posting. That that is the rule was established beyond question in the file and through testimony. It may well be that the Service had made a determination that it needed fewer employees, and indeed they operated the facility with a reduced compliment for the better part of a year. The Union, for its part, did not grieve the failure to post the vacant positions, which the Service had an obligation to do.

The Union seeks an order directing that all of the omitted jobs be posted at once. It notes, however, that there was a prior agreement to promote 3 bargaining unit members and to revert the positions that those employees occupied and then vacated.

The Service is directed to post and fill ten positions as follows: Three newly created positions of level 8 technicians, to be filled by eligible bidders presently holding assignments as garagemen, and seven (7) other positions to be filled, including positions in the Bronx. The Union is directed to discuss and seek agreement as to best deployment of these positions with the facility manager and Motor Vehicle Director and finalize the the postings within 90 days. Should they fail to agree, I retain jurisdiction to resolve any remaining disagreement.

The Union seeks compensation for the failure to post the jobs as required. I note, however, that the case file includes no data as to a potential award of damages, and I decline to order such a remedy.



Robert Tim Brown,. Esq., Arbitrator Dated and issued September 23, 2016

REGULAR ARBITRATION PANEL

In the Matter of Arbitration Between	Grievant: Class Action
	Post Office: Boston, MA
UNITED STATES POSTAL SERVICE	Case No. B00V-4B-C 07025979
and	
AMERICAN POSTAL WORKERS UNION	Union No. BO20061723

Before: Timothy Buckalew, Arbitrator

Appearances:

For the Postal Service:

Reguvaran Nair, LRS
USPS
1050 Forbell St., RM 2015-3
Brooklyn, NY 11256

For the Union:

Joseph LaCapria, Nat'l Bus. Agent
MVS Division--APWU
5 N.Village Ave. Suite 3
Rockville Center, NY 11570

Place of Hearing:	Boston, MA
Date of Hearing:	February 3 and March 8, 2017, Post-hearing briefs, March 14
Date of Award:	April 27, 2017
Relevant Contract Provisions:	Article 7
Contract Year:	2006
Type of Grievance:	Contract, Remedy

AWARD SUMMARY

Monetary relief is an appropriate remedy for a cross-craft Article 7.2 contract violation.

Issues

What is the proper remedy?

RELEVANT FACTS

The facts of the underlying dispute are set out in my award of February 8, 2015, bearing the same caption and case designation. I hereby incorporate that award in its entirety. When the award issued, I retained jurisdiction for ninety days to permit the parties time to resolve the question of the appropriate remedy. For purposes of this decision, I treat the hearing and arguments as a request for clarification of the award. The Postal Service, argues that the Arbitrator should not consider clarifying the award because: a) the Union unduly delayed requesting the Arbitrator's re-involvement in the remedial dispute, and b) the Union failed to prove that the contract violation resulted in any harm to the members of the bargaining unit warranting a monetary award.

The threshold issue at the hearing on remedy focused on the Postal Service's claims that no remedy is warranted because of the Union's delay in pursuing its remedial rights. I address the evidence and arguments associated with what the Postal Service characterized as *laches*. The Postal Service framed this objection as whether the Union should be barred from pursuing the Arbitrator's engagement in the remedial dispute because the award issued on February 8, 2015, but the Union did not request the involvement of the Arbitrator until April 15, 2016.

Laches is an ancient, some might say, moldy, legal defense from civil law originally applied in cases of equity where a defendant sought to bar a plaintiff from seeking equitable relief (an injunction, for example) because the plaintiff's delay in bringing a suit is alleged to have prejudiced the defendant. Typically, a defendant raises the affirmative defense of *laches* asserting that the passage of time itself has caused the loss of witnesses or other evidence favorable to the defendant's case and that the unreasonable delay was a strategy to weaken the defendant's right to raise defenses that it otherwise would have been able to assert.[1] As an equitable defense it is usually limited to cases where a plaintiff is seeking equitable relief and not damages.

At the hearing I denied the Postal Service's defense and reassert that denial in this

[1]. "equity aids the vigilant and not those who slumber on their rights." - Black's Law Dictionary.

award. *Laches* is an inappropriate defense to the Union's attempt to clarify the award because this is a request to clarify a final and binding award granting the Union's grievance. The delay in engaging the Arbitrator did not prejudice the Postal Service's ability to offer a defense to the claim for a money award because the evidence that would have been proffered by the parties regarding individualized harm was not apparently not available in 2015 or in 2017.

Beyond that, the delay in bringing forward this remedial dispute does not appear to rest entirely with the Union. There was testimony that after the award issued the parties had several unfruitful meetings attempting to negotiate a solution to no avail. Ultimately, as I understand the facts, after the normal back and forth, the Postal Service concluded from their interpretation of the award, that no monetary remedy was appropriate because there was no evidence that any identified member of the MVS craft was denied work or overtime opportunities because of the cross-craft violation. That position was informed in some part by management's inability to produce payroll or other records that would permit the determination of who, if any, MVS craft employees were available to work during the hours of operation of the shuttle. I did not conclude that the Union's delay in bringing the remedy issue back to the Arbitrator was unreasonable under the circumstances. I reinforce that decision here.

Finally, it could be argued that the Arbitrator had no jurisdiction here because more than ninety days elapsed from when the award issued until the date the Union proposed bringing the remedy issue back to the Arbitrator. That argument would be more persuasive in an *ad hoc* arbitration tribunal. But as a permanent member of the District arbitration panel, it my responsibility to issue awards consistent with the parties' negotiated collective bargaining agreement and when called on, to clarify the remedy when appropriate. The obligation to hear disputes designated by the parties for the term of my service on the panel overcomes any questions regarding the nature of the arbitrator's continuing obligation, and authority to resolve any disputes over the interpretation and application of an award.

Turning to the merits of the case I find the Union's claim supported, at least in

part.

The bare bones of the facts of this case have not been clarified by the two intervening years.

Union witnesses testified the facts found in the February 8 award were the basis from which Union representatives worked to establish a monetary remedy. From October 2006 to December 2009 while the Back Bay Station was under reconstruction the Postal Service assigned light duty status individuals from the mail carrier craft to drive vans in the morning (0975 to 1200) to shuttle temporarily housed letter carriers from the Boston P & DC to the start location of their regular routes and to retrieve the letter carriers at the ends of their routes (1400 to end of work) in the afternoons to the Boston P &DC. The shuttle driving work did not occupy all the work hours of the letter carriers but did require signing out the the vans from the "A" St. parking area where MVS vehicles normally park and at the end of the day returning the vans to the same parking lot to be checked in.

Scott Hoffman, Local President, testified that the parties met on October 26, 2016 and January 11, 2071. Prior to the October 26 meeting the parties agreed meet within thirty days "to discuss potential remedy" for the February 8, 2015 award. Hoffman made a settlement offer based on time transporting carriers to and from the P&DC (3 x 2.25 hours + 6 hours in the afternoon + 1 hour travel time @ day = 18.75 hours per day x 6 days a week) or 99 hours a week for the period October 2006 to December 2009. At straight time rates, the Union argued for a monetary remedy of $425, 250. The Union argued that this remedy was substantially less than a "fully loaded" liability which the Union argued should include pay at overtime rates, sick leave and other benefits totaling more than $637,875.The Postal Service's representatives, Connie Marvin, Manager Labor Relations, and Micheal Foley met with Hoffman, William Weaver, but did not approve the proposed remedy and did not make a counter offer.

Scott Hoffman testified that the the Union based its remedial claim on the number of members of the bargaining unit, drivers, mechanics and dispatch clerks, on all tours who could have performed the work, and that the total hours was based on the actual

operation of the shuttle vans. The LMOU sets up OTDL's by tour, section and required skills, employees who are willing to work overtime at the tour and another list for those willing to be called back outside their tour at a guaranteed four hour payment. Hoffman also testified the work would be available for light and limited duty employees at the Northwest facility as well as PTR's who could have done the shuttle work and because it was regularized work for three years, senior PTR's who took that assignment would have been eligible for conversion to FTR's. Hoffman testified that management did not request names of specific individuals and that it was understood during negotiations that the Union would have to prove employees were displaced but no one asked the Union to name the MVS craft employees it thought should get the benefit of a monetary remedy.

At one point management indicated that they thought the total should be based on one shuttle or on less hours during the day because the letter carriers driving the vans were not occupied for the entire shift with that function. Hoffman testified that the Union did not have a list of names of individuals that were denied work during the period, but the Union argued that management should have provided information about the MVS craft members available for the work. The Union requested documentation after negotiations broke down attempting to recover the hours worked by MVS TTO's and MVO's during the time the shuttles were running, overtime desired lists for the period and all light and limited duty MVS craft employees showing driving or non-driving status for the same period. In February 2017, management informed the Union that none of the sought-after information was available as the records could not be retrieved.

Manager Marvin testified that she was first approached by representatives of the Union in April, 2016 to discuss the remedy. During subsequent negotiations, the Union presented "abstract numbers" based on the hours of work performed by carriers, etc., but did not produce a list of names of employees harmed by the Article 7 violation.

Marvin explained that management understood the February 8 award to require the Union to show individualized harm to employees: lost wages, lost overtime or displaced from their craft. At the hearing, and in post-hearing arguments, the Postal Service places the burden for proving a monetary remedy on the Union based on the

penultimate paragraph on page 11 of the award:

> "The Union's claim for overtime pay for the lost work is not justified on this record. **To prove a loss of overtime opportunities**, the Union must show that either the work lost was preformed on an overtime basis by the letter carriers, not shown in the evidence, or that motor craft employees affected by the lost work would have been working on an overtime basis, also not shown in this evidence. **To justify a compensatory award, the Union must show that there was lost work (*sic)* displaced craft employees seeking work opportunities during this period…"** [emphasis added]

Because the Union did not provide any concrete examples of MVS employees by name who were denied work, Marvin testified management did not deem a counter-offer necessary, and while management agreed to sign the October 2016 commitment to negotiate over remedy, it did not require the Postal Service agree to the remedy proposed by the Union.

Steve Kennedy, Manager of Transportation Networks, testified there were ten unassigned PTF's working during the relevant period, and that there were approximately 60 employees on the OTDL for all tours. He was not asked to provide a list of MVS drivers who could have driven the vans during Tour 2 hours of operation by the Union after the award issued. He was not aware of any employees on the second tour available for the van shuttle work, but was not aware of the status of any VMF mechanics and admitted that if the request for a drivers had been made he could have made a request throughout the section. MVS clerks could have also been used as drivers and with respect to the overtime available in the section, not all members of the bargaining unit were working up to the limit of twelve hours per day.

Michael Foley, LRS, attended the remedy negotiation meeting and corroborated Marvin's testimony. The Union did not provide a list of names of employees entitled to a monetary remedy and that meant management did not have to make a counter offer under their reading of the award. He acknowledged that the meeting was short and that management did not ask for such information at the meeting.

Discussion-Positions of the Parties

The Postal Service argues that no monetary remedy is appropriate because the Union has failed to meet the proof requirements of the award. While the Union provided information on hours and dollars for the three years when carriers were driving other carriers to work, it did not produce evidence at the hearing or in the remedial meeting with management showing who the employees were who could have performed the work and how many hours each employee would have earned whether regular hours or from the OTDL. The Union did not produce witnesses who had actually harmed or who could have done the driving work. The evidence was not produced as required by the award, therefore the Union failed to meet the requirement of the award and should not be allowed to claim monetary relief here. The Union instead, based its claim on the hours worked by the carriers as collected by MVS President Weaver. The Union's claim is based entirely on its unilateral reading of the award and has nothing to do with identifying employees to be compensated. Pointing out that there were PTF, or limited-light duty employees or clerks who could have driven does not satisfy the award, according to management.

The Postal Service's reading of the award is too literal and ignores the fundamental finding that it has liability for ignoring the MVS craft's jurisdiction over the driving work. The quoted paragraph from page 11 was not intended to be a blueprint for the negotiations over a remedy. The requirement of showing "lost work" is obscured by the missing comma which makes it read as if "lost work" is defined by "displaced employees." The intent of the page 11 paragraph was not to limit the Union's claim by requiring proof that employees were displaced, but to offer examples of how the Union could justify its claim for monetary relief, "lost work" and "displaced employee" being two such routes. The other point, apparently not made with sufficient clarity, was that I could not grant the Union's requested remedy in the award because there was insufficient proof adduced at the hearing to allow me to determine what the overtime losses were incurred. That the evidence of employee damages was not in the record has been interpreted to mean that the Arbitrator did not see the violation as warranting any remedy

unless the Union could offer up contemporaneous individual grievances of employees demanding the driving work being performed by carriers. That was not the intent of the award.

The Union did not sit on its rights in this case, but promptly filed a grievance on November 17, 2006, contesting the assignment of letter carriers as van drivers to transport other carriers. Management was on notice that the Union claimed the work and took the risk that any grievance would be resolved in its favor knowing there was a national level award from Arbitrator Snow preserving work that was primarily and functionally driving to the MVS craft. The sirens call of efficiency resulted in management not even attempting to solicit drivers from the MVS craft. There is no dispute that in 2006 there were PTF employees in the craft who could have driven vans; there is no dispute that no canvas was made of the MVS tour or section to gauge the availability of employees who may have wanted the assignment on a straight or overtime basis.

In many respects, this case has the same practical remedial difficulties as found in Article 7 grievances challenging the failure to convert a senior PTF clerk arising under the previous contract. Because those cases frequently involved employees who suffered no loss of work, but instead lost out-of-schedule pay, lack of regular NS days, etc., management and the Union frequently disagreed on whether a make whole remedy was appropriate. In B00C-1B-C 04051900 (2004), I concluded that where the Union made out a prima facie case in a "failure to maximize" Article 7 case, there was also a prima facie case of harm "both to the Union and to the employee who has lost the benefit of the bargain negotiated on his or her behalf." I also emphasized that the purpose of a make whole remedy is not to penalize or punish the Postal Service, but "to place the harmed party in the position he or she would have been in had the agreement been followed."

The problem with the implementation of a monetary remedy in this case is not that the Union has not produced individuals who were harmed by the three-year loss of work to the carrier bargaining unit. The problem is practical. This grievance was a class action from the outset, filed on behalf of unnamed members of the bargaining unit

(including at the time one or more PTF, and some working limited and light duty). The Union investigation focused on the hours of work being performed by carriers, the loss to the unit, and not the identity of members of the MVS craft who lost that work (at straight or overtime rates). By the time the case advanced to arbitration several years later the focus of the parties was the right of the MVS craft to claim the driving work. The Union did not demonstrate overtime loss on a one-to-one basis because the evidence showed the carriers worked on a straight time basis. That does not mean the Arbitrator concluded there was no monetary damage to the Union or individuals in the unit.

The Union established a prima facie case that Article 7.2 was violated from October 2006 to November 2009 and that violation is undisputed here. The Union and its members lost the benefit of Article 7.2 protecting the work done in different crafts for the members of the respective bargaining unit. The language quoted by the Postal Service appears to limit the Union's options for recovery but other language in the award was intended to make clear that the loss of that work to the other bargaining unit could justify a monetary remedy. There was no intention to require the Union to produce employees to testify that they were seeking the van driving work in 2006--an impractical, if not impossible requirement. Additionally, the award remanded the question of remedy to the parties to determine "what remedy" is appropriate, a signal that the Arbitrator found that a remedy of some sort could be found. If the award had been limited to a "cease and desist" order, the award would have expressly stated that there was no monetary remedy. A cease and desist remedy would not adequately repair the losses incurred by the bargaining unit and the Union and would have no cost repercussions to deter similar contract violations.

The record shows that in November 2006 the Postal Service identified the carriers driving the shuttle vans. Two were light/limited duty carriers; three were PTF's. The Union suggests a one-for-one hourly value as the basis for the remedy. That remedy would not reflect exactly the lost opportunities experienced by the MVS craft, but is a practical starting point for finding a remedy that reflects the loss that can't be entirely recovered now because of the age of contract violation.

I decline to fix final monetary relief because the goals of the parties in such negotiations may include matters outside the scope of this award. I direct the parties to resume discussions on the remedy based on the understanding that a monetary settlement does not have to identify specific employees to be compensated.

Award

A monetary remedy is is proper and ordered based on straight time hours and excluding compensation for holidays, out-of-schedule premium or other benefits.

Respectfully submitted,

Timothy J. Buckalew, Arbitrator

UNITED STATES
POSTAL SERVICE

December 20, 2016

Pre-Arbitration Settlement

REGIONAL (GATS): B10V-1B C 15230266
LOCAL ID: 14CFM134/15-262
GRIEVANT: Class Action
OFFICE: Springfield NDC

The above captioned case is hereby resolved on a non-citeable and a non-precedent setting basis in the following manner:

Tractor Trailer Operators at the Springfield NDC shall be made whole for the delay in insourcing HCR # 01093 from July 2015 to February 20, 2016. The total amount will not exceed $130,000. The Local Union shall provide a list of names, Employee Identification Numbers and the amount to be paid.

The APWU hereby withdraws its appeal through the Grievance/Arbitration procedure for the above-cited case.

Mark Forgue

Digitally signed by Mark G Forgue
DN: cn=Mark G Forgue, o=Northeast Area Human Resources, ou=Northeast Area labor Relations, email=mark.g.forgue@usps.gov, c=US
Date: 2016.12.20 12:51:32 -05'00'

Mark Forgue Date
Labor Relations Specialist
Northeast Area

12-20-16

Joseph LaCapria Date
National Business Agent (MVS)
APWU

Joseph LaCapria - MV Division
American Postal Workers Union
National Business Agent
5 N. Village Ave. Ste 3
Rockville Centre, NY 11570

Settlement Agreement

B10V4BC15052817 - 14196
B10V4BC15052758 - 14197

In full and final settlement of the cases outlined above the parties agree to the following:

The total amount of back pay shall be $100,000.00

APWU will provide the names and employee ID numbers to management within 30 days from the date of the settlement. This amount will be shared between the LDC 32 mechanics identified by the union as referenced above. The union will provide the employee name, employees ID numbers as well as the amount to be paid said employee.

Effective July 21, 2017 management agrees to offer 8 hours of overtime on one nonscheduled day per week. This overtime is in addition to the 8 hours of weekly overtime for a total of 56 hours of overtime per week.

After a 6-month period the parties shall meet and discuss the continuation of the 8-hour non-scheduled day overtime. These discussions will include, but are not limited to, the current and future work load, current status of contracting out, and other considerations impact the operation. No unilateral change in the overtime policy will be made until such time as the parties meet and discussion the continuation of the current overtime agreement.

The parties agree management will pay for the hearing on July 21, 2017.

It is understood the settlement is citable for enforcement purposes only.

The union will withdraw their request for arbitration as the cases are settled.

Joseph LaCapria
APWU
MVS National Business Agent
Date: 8-2-17

Michael Pugliese
USPS
Area Manager Fleet Operations
Date: 8.7.17

Joseph LaCapria - MV Division
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