

Local Grievance # _____

Issue Statement (Block 15 of PS Form 8190):

1. Did management violate Article 16 and Section 115 of the M-39 Handbook via Article 19 of the National Agreement when they placed Letter Carrier **[name]** on Emergency Placement in Off Duty Status on **[date]** for Unsafe Driving Practices, and if so, what should the remedy be?
2. Did management violate Article 29 of the National Agreement by failing to assign Letter Carrier **[name]** non-driving duties after they suspended/revoked his/her driving privileges at work and, if so, what should the remedy be?

Union Facts and Contentions (Block 17 of PS Form 8190):

Facts:

1. Letter Carrier **[name]** was placed on Emergency Placement on **[date]** for "Unsafe Driving Practices".
2. Letter Carrier **[name]** has over **[number of years]** years of faithful service with the Postal Service and there was no history of discipline shown in the Emergency Placement notice.
3. The Emergency Placement was based solely on events that took place at **[time of day]** on **[date]**.
4. Management placed the grievant on Emergency Placement at **[time of day]** on **[date]**.
5. Management's only charge is that the grievant was involved in a vehicle accident while on duty on **[date]**.
6. Article 16, Section 7 of the National Agreement states in relevant part:

"An employee may be immediately placed on an off-duty status (without pay) by the employer, but remain on the rolls where the allegation involves intoxication (use of drugs or alcohol), pilferage, or failure to observe safety rules and regulations, or in cases where retaining the employee on duty may result in damage to U.S. Postal Service property, loss of mail or funds, or where the employee may be injurious to self or others..."
7. National Arbitrator Mittenthal interpreted Article 16, Section 7 in case number H34N-3U-C 58637 (C-10146) as follows:

“...The critical factor, in my opinion, is that Management was given the right to place an employee “immediately” on non-duty, non-pay status on the basis of certain happenings. An “Immediate...” action is one that occurs instantly, without any lapse of time...The very purpose of a Section 7 “emergency procedure” is to permit an “immediate...” response by Management...”

8. The following language appears in Article 16 of the Joint Contract Administration Manual (JCAM):

What Test Must Management Satisfy? *Usually employees are placed on emergency non-duty status for alleged misconduct. However, the provisions of this section are broad enough to allow management to invoke the emergency procedures in situations that do not involve misconduct— for example if an employee does not recognize that he or she is having an adverse reaction to medication. The test that management must satisfy to justify actions taken under this Article 16.7 depends upon the nature of the “emergency.” In H4N-3U-C 58637, August 3, 1990 (C-10146)*

National Arbitrator Mittenthal wrote as follows: My response to this disagreement depends, in large part, upon how the Section 7 “emergency” action is characterized. If that action is discipline for alleged misconduct, then Management is subject to a “just cause” test. To quote from Section 1, “No employee may be disciplined...except for just cause.” If, on the other hand, that action is not prompted by misconduct and hence is not discipline, the “just cause” standard is not applicable. Management then need only show “reasonable cause” (or “reasonable belief”) a test which is easier to satisfy.

9. Article 29 of the National Agreement states in relevant part:

“An employee’s driving privileges may be revoked or suspended when the on-duty record shows that the employee is an unsafe driver...Every reasonable effort will be made to reassign such employee to non-driving duties in the employee’s craft or in other crafts....”

10. National Arbitrator Carlton Snow interpreted Article 29 in case number I94N-4I-D 96027608 (C-18159) as follows:

“Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that Article 29 of the agreement with the National Association of Letter Carriers requires the Employer to make temporary cross-craft assignments in order to provide work for carriers whose

occupational driver's license has been suspended or revoked. The Employer is required to do so in a manner consistent with the APWU collective bargaining agreement. In instances where it is impracticable to fulfill its contractual obligation under both agreements, the Employer is without contractual authority to remove such employee. Such individuals shall be placed on leave with pay and reinstated to working status as soon as work is available by placing the employee in a position which will not violate the collective bargaining agreement of either party."

Contentions:

1. None of the criteria set forth in Article 16, Section 7 of the National Agreement was present on **[date]** with respect to this case. Therefore, there was no legitimate basis to invoke Article 16, Section 7 on the day in question.
2. The agency violated Article 16, Section 7 of the National Agreement by failing to immediately place the grievant on Emergency Placement as required by Article 16.7 and the interpretation of these provisions by National Arbitrator Mittenthal.
3. The agency violated Article 29 of the National Agreement by not making every reasonable effort to assign the grievant non-driving duties when they temporarily suspended/revoked the grievants driving privileges on the day in question. As a matter of fact, the record is clear that management made no effort whatsoever to assign the grievant non-driving duties. Instead, they circumvented their contractual responsibilities as outlined in Article 29 by placing the grievant on Emergency Suspension.
4. The agency failed to consider the grievants tenure and discipline record as a mitigating factor in this case.
5. The grievant is accused of misconduct in the instant case. Therefore, the agency must bear the burden of proving that just cause existed to place the grievant on an Emergency Suspension. Article 16 of the National Agreement states in relevant part:

"In the administration of this article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined except for just cause..."

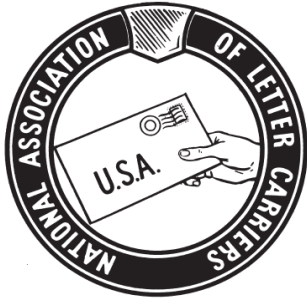
6. Management simply can't establish just cause in the case at bar. The discipline issued was punitive rather than corrective in nature.
7. Regardless of how this situation is viewed, the inescapable conclusion is that management failed to follow Section 115 of the M-39 Handbook. Section 115.1 of the M-39 Handbook states:

*“In the administration of discipline, a basic principle must be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause. **The delivery manager must make every effort to correct a situation before resorting to disciplinary measures.**”*
(emphasis added)

8. Management did not pass the *any effort* test, much less the *every effort* test to correct this situation prior to resorting to discipline in this case.
9. In conclusion, management failed to carry their burden of proving just cause in this case and therefore, an appropriate remedy must be granted.

Remedy (Block 19 of PS Form 8190):

1. That the notice of Emergency Placement in Off Duty Status dated **[date]** and issued to Letter Carrier **[name]** for “**[charge]**” be withdrawn and removed from all employee records and files effective immediately.
2. That Letter Carrier **[name]** be made whole for all lost wages and benefits lost as a result of this action to include the average number of overtime hours worked by other Letter Carriers on the 12-hour ODL, or whatever remedy the Step B team or an arbitrator deems appropriate.



National Association of Letter Carriers Request for Information

To: _____
(Manager/Supervisor)

Date _____

(Station/Post Office)

Manager/Supervisor _____,

Pursuant to Articles 17 and 31 of the National Agreement, I am requesting the following information to investigate a grievance concerning a violation of Articles 16, 19 and 29:

1. Copy of Letter Carrier **[name]**'s Investigative Interview.
2. Copy of the Request for Discipline for Letter Carrier **[name]** dated **[date]**.
3. Copy of Letter Carrier **[name]**'s TACS Everything Report for **[date(s)]**.

I am also requesting copies of any and all documents, statements, records, reports, audio/video tapes, photographs, or other information learned, obtained, developed or relied upon by the Postal Service in the issuance of the _____ dated **[date]**, involving employee **[name]**.

I am also requesting time to interview the following individuals:

1. **[Name]**
2. **[Name]**
3. **[Name]**

Your cooperation in this matter will be greatly appreciated. If you have any questions concerning this request, or if I may be of assistance to you in some other way, please feel free to contact me.

Sincerely,

Shop Steward
NALC

Request received by: _____

Date: _____



National Association of Letter Carriers Request for Steward Time

To: _____
(Manager/Supervisor)

Date _____

(Station/Post Office)

Manager/Supervisor _____,

Pursuant to Article 17 of the National Agreement, I am requesting the following steward time to investigate a grievance. I anticipate needing approximately _____ (hours/minutes) of steward time, which needs to be scheduled no later than _____ in order to ensure the timelines established in Article 15 are met. In the event more steward time is needed, I will inform you as soon as possible.

Your cooperation in this matter will be greatly appreciated. If you have any questions concerning this request, or if I may be of assistance to you in some other way, please feel free to contact me.

Sincerely,

Shop Steward
NALC

Request received by: _____
Date: _____