

Local Grievance # _____

Issue Statement (Block #15 on PS Form 8190):

Did Management at the [Station/Post Office] violate Article 5 of the National Agreement and/or Employee and Labor Relations Manual (ELM) Section 432.33 via Article 19 of the National Agreement by improperly disapproving PS Form(s) 3189 and requiring the grievant to take a lunch break on [date], and if so, what should the remedy be?

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

Facts:

1. Letter Carrier [name] properly submitted a PS Form 3189 requesting a temporary change of schedule for personal convenience dated [date]. This form is included in the case file.
2. Management disapproved the request and **[did not give a reason for disapproval/wrote the following as the reason for disapproval]:**
3. Management at the [Station/Post Office] instituted a blanket policy of denying requests for temporary changes of schedule on or about [date]. This fact is supported by the [carrier statements/written notice/etc.] included in the case file.
4. There is a long standing practice of Letter Carriers at the [Station/Post Office] being allowed to temporarily change their schedule via PS Form 3189 by waiving their lunch period. This fact is verified by the [carrier statements/approved 3189's] in the case file.

Contentions:

1. Management violated Article 5 of the National Agreement and/or ELM Section 432.33 via Article 19 by improperly disapproving PS Form(s) 3189.
2. The union contends management must give a legitimate, specific reason for disapproval on PS Form 3189. In this case, management gave [no reason/gave a vague reason/gave an invalid reason] for disapproval. Management's actions in this case were arbitrary and capricious.
3. The union contends the blanket policy of disapproving requests for temporary changes of schedule is improper. Each request should be considered on a case-by-case basis.

4. The union contends a past practice of allowing Letter Carriers to temporarily change their schedule has been established at the **[Station/Post Office]**.

5. Article 5 of the JCAM explains:

Article 5 may also limit the employer's ability to take a unilateral action where a valid past practice exists. While most labor disputes can be resolved by application of the written language of the Agreement, it has long been recognized that the resolution of some disputes require the examination of the past practice of the parties.

Defining Past Practice

In a paper given to the National Academy of Arbitrators, Arbitrator Mittenthal described the elements required to establish a valid past practice:

- First, there should be clarity and consistency. A course of conduct which is vague and ambiguous or which has been contradicted as often as it has been followed can hardly qualify as a practice. But where those in the plant invariably respond the same way to a particular set of conditions, their conduct may very well ripen into a practice.*
- Second, there should be longevity and repetition. A period of time has to elapse during which a consistent pattern of behavior emerges. Hence, one or two isolated instances of certain conduct do not ordinarily establish a practice. Just how frequently and over how long a period something must be done before it can be characterized as a practice is a matter of good judgment for which no formula can be devised.*
- Third, there should be acceptability. The employees and supervisors alike must have knowledge of the particular conduct and must regard it as the correct and customary means of handling a situation. Such acceptability may frequently be implied from long acquiescence in a known course of conduct. Where this acquiescence does not exist, that is, where employees constantly protest a particular course of action through complaints and grievances, it is doubtful that any practice will be created.*
- One must consider, too, the underlying circumstance which give a practice its true dimensions. A practice is no broader than the circumstances out of which it has arisen, although its scope can always be enlarged in the day-to-day administration of the agreement. No meaningful description of a practice can be made without mention of these circumstances. For instance, a work assignment practice which develops*

on the afternoon and midnight shifts and which is responsive to the peculiar needs for night work cannot be automatically extended to the day shift. The point is that every practice must be carefully related to its origin and purpose.

• Finally, the significance to be attributed to a practice may possibly be affected by whether or not it is supported by mutuality. Some practices are the product, either in their inception or in their application, of a joint understanding; others develop from choices made by the employer in the exercise of its managerial discretion without any intention of a future commitment.

6. Management's failure in this regard has caused significant harm to the Letter Carrier(s) in the **[Station/Post Office]**. There are times when Letter Carriers need to complete their tour earlier/start their tour later in order to take children to the doctor or a school event, take care of ailing parents, or a myriad of other life events beyond their control.

Remedy (Block #19 on PS Form 8190):

1. That management cease and desist Article 5 of the National Agreement and/or Employee and Labor Relations Manual (ELM) Section 432.33 via Article 19 of the National Agreement
2. That management consider each request for a temporary change of schedule on a case-by-case basis.
3. That management cease and desist arbitrarily and capriciously disapproving requests for a temporary change of schedule.
4. That Letter Carrier **[name]** be paid a lump sum of \$100.00 to serve as an incentive for future compliance.
5. That all payments associated with this case be made as soon as administratively possible, but no later than 30 days from the date of settlement.
6. That proof of payment be provided to **[NALC Official]** upon payment, and/or any other remedy the Step B team or an arbitrator deems appropriate.

Add the following issue statement, facts, contentions, and remedy request if we can prove the violation is repetitive:

Issue Statement:

Did management violate Article 15, Section 3.A of the National Agreement along with policy letter M-01517 by failing to comply with the prior Step B decisions or local grievance settlements in the case file, and if so, what should the remedy be?

Facts:

1. Article 15, Section 3.A of the National Agreement states in relevant part:

The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in resolution of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end.

2. M-01517 states in part:

Compliance with arbitration awards and grievance settlements is not optional. No manager or supervisor has the authority to ignore or override an arbitrator's award or a signed grievance settlement. Steps to comply with arbitration awards and grievance settlements should be taken in a timely manner to avoid the perception of non-compliance, and those steps should be documented.

3. Included in the case file are **[Arbitration Awards/Step B decisions/local grievance settlements, etc.]** in which management was instructed/agreed to cease and desist violating Article 5 of the National Agreement and/or Employee and Labor Relations Manual (ELM) Section 432.33 via Article 19 of the National Agreement by improperly disapproving PS Form(s) 3189.

Contentions:

1. Management violated Article 15, Section 3.A of the National Agreement and M-01517 by failing to abide by the previous Step B decisions/local grievance settlements in the case file. When management violates contractual provisions despite being instructed/agreeing to cease and desist these violations, they have failed to bargain in good faith.
2. The Union contends that Management has had prior cease and desist directives to stop violating Article 5 of the National Agreement and/or Employee and Labor Relations Manual (ELM) Section 432.33 via Article 19 of the National Agreement by improperly disapproving PS Form(s) 3189. The Union also contends that

Management's actions are continuous, egregious and deliberate. The Union has included past decisions/settlements in the case file to support their claim.

Remedy:

1. That management cease and desist violating Article 15 of the National Agreement.
2. That Letter Carrier(s) **[Name], [Name], and [Name]** each be paid a lump sum of \$100.00 to serve as an incentive for future compliance.



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 Article 15:

1. A copy of any and all PS forms 3189 submitted by Letter Carriers from **[date]** to **[date]**.

In addition, 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,

Request received by: _____

Shop Steward
NALC

Date: _____



National Association of Letter Carriers Request for Steward Time

To: _____ Date _____
(Manager/Supervisor)

(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,

Request received by: _____

Shop Steward
NALC

Date: _____