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Issue Statement (Block 15 of PS Form 8190):

Did management violate Articles 3, 5, and 21 of the National Agreement and 20 C.F.R. 10 when they improperly calculated CCA COP and/or Wage Loss Compensation, and if so, what should the remedy be?

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

Facts:

1. Letter Carrier **[name]** suffered a traumatic on-the-job injury on **[date]** at approximately **[time]** when **[explain incident]**.
2. Letter Carrier **[name]**'s claim was accepted by OWCP and was entitled to Continuation of COP and/or Wage Loss Compensation. This is documented by the Acceptance Letter from the Dept. of Labor.

3. Article 21.4 of the National Agreement states:

Employees covered by this Agreement shall be covered by Subchapter I of Chapter 81 of Title 5, and any amendments thereto, relating to compensation for work injuries. The Employer will promulgate appropriate regulations which comply with applicable regulations of the Office of Workers' Compensation Programs and any amendments thereto.

4. Article 21 of the JCAM explains:

Workers' Compensation. Letter carriers who sustain occupational injury or disease are entitled to workers' compensation benefits under the Federal Employees' Compensation Act (FECA), administered by the U.S. Department of Labor's Office of Workers' Compensation Programs (OWCP).

Sources of information concerning federal workers' compensation benefits are:

- ELM Section 540—USPS regulations governing workers' compensation;
- USPS Handbook EL-505, Injury Compensation (December 1995);
- Title 5 United States Code Section 8101 (5 U.S.C. 8101)—the Federal Employees' Compensation Act (FECA);

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- Title 20 Code of Federal Regulations Section Chapter 1 (20 C.F.R. 1) —regulations of the Office of Workers' Compensation Programs;

5. National Arbitrator Bernstein ruled in case number H1N-5G-C 14964:

Article 5 of the National Agreement serves to incorporate all of the Service's "obligations under law" into the Agreement, so as to give the Service's legal obligations the additional status of contractual obligations as well. This incorporation has significance primarily in terms of enforcement mechanism--it enables the signatory unions to utilize the contractual vehicle of arbitration to enforce all of the Service's legal obligations. Moreover, the specific reference to the National Labor Relations Act in the text of Article 5 is persuasive evidence that the parties were especially interested in utilizing the grievance and arbitration procedure spelled out in Article 15 to enforce the Service's NLRB commitments.

6. The method for calculating COP weekly pay for CCAs is found at 20 CFR 10.216(b)(2):

Calculate the total pay earned by the employee during the one-year period prior to date of injury (excluding overtime), divided by the number of weeks worked by the employee during that one-year period (a partial week counts as an entire week).

7. OWCP addressed the issue of how to calculate COP and WLC for Postal Service CCAs, in FECA Bulletin (FB 13-03) which states:

A. Computation of COP

As part-time workers who generally do not work the same number of hours each week, but who do work each week of the year, COP for CCA and MHA employees should be calculated in accordance with 20 CFR §10.216(b)(2). The weekly pay rate for COP is therefore the average of the weekly earnings for the year prior to the date of injury, in accordance with the following formula:

Total pay earned during one-year period prior to injury (excluding overtime), divided by 52 weeks for the year prior to the injury (or prorated if employee worked less than a year).

For purposes of this computation, a partial-work week is counted as an entire week.

B. Computation of Compensation

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- 1. Upon receipt of a properly completed CA-7, Claim for Compensation, for a CCA or MHA employee, the CE should review the case file in accordance with established procedure to determine whether the employee is entitled to compensation for the claimed period.*
- 2. If it is determined that the employee is entitled to compensation, the CE should then compute the pay rate. The CE should first review the USPS response in Section 9(b) of the CA-7. If the USPS indicated that the employee worked in the position for 11 months prior to injury, compensation should be paid in accordance with 5 U.S.C. 8114(d)(1). As work hours for CCA and MHA employees are generally variable, the CE should obtain the employee's gross earnings (excluding overtime) from the USPS for the year prior to the appropriate effective pay rate date and divide by 52 to obtain the base pay rate. If applicable, the USPS should also be asked to provide gross premium pay for the year prior to the appropriate effective pay rate date for inclusion in the pay rate.*
- 3. If, in Section 9(b) of the CA-7, the USPS indicated that the employee did not work in the position for 11 months prior to injury, but that the position would have afforded employment for 11 months but for the injury, compensation should be paid in accordance with 5 U.S.C. 8114(d)(2). As work hours for CCA and MHA employees are generally variable, the CE should request that the USPS provide the gross earnings (excluding overtime) of an employee of the same class working substantially the whole year prior in the same or similar employment in the same or neighboring place. The CE should then divide by 52 to obtain the base pay rate. If applicable, the USPS should also be asked to provide gross premium pay amounts for inclusion in the pay rate.*
- 4. If the USPS advises that there are no employees of the same class who have worked substantially the whole preceding year in the same or similar employment, 5 U.S.C. 8114(d)(2) is not applicable and compensation should be computed in accordance with 5 U.S.C. 8114(d)(3). The CA-1029 and CA-1030 forms (or equivalent) should be released to the claimant and employer as appropriate. Following development, the CE should compensate the claimant by taking the highest of: (a) The earnings of the employee in the year prior to the appropriate effective pay rate date, including any similar non-Federal employment (if no other employment this figure should be calculated by using prorated weeks like the COP calculation); (b) The earnings of a similarly-situated employee; or (c) The pay rate determined by the "150 formula." The CE may compensate the claimant using a provisional pay rate while the pay rate is being developed.*

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5. If the USPS indicates, in Section 9(b) of the CA-7, that the position would not have afforded employment for 11 months but for the injury, the CE should first seek clarification from the agency. CCA and MHA employees are hired for terms of 360 days, which exceeds 11 months. Should the USPS provide sufficient rationale for its notation that the position would not have afforded employment for 11 months, compensation should be computed under 5 U.S.C. 8114(d)(3). Otherwise, compensation should first be considered under 5 U.S.C. 8114(d)(2).

Note: Because the CCA and MHA positions are new to the USPS, if an employee is injured within the first 11 months after the effective date of the positions, 5 U.S.C. 8114(d)(1) will not apply initially, since the employee will not have worked in the position for 11 months.

6. MHA Position - OWCP has determined that there was not a position similar to the MHA; therefore, the CE will be unable to request the earnings of a similar employee for an MHA until someone in the particular facility (or a neighboring facility) has worked the MHA position for 11 months. This means that 5 U.S.C. 8114(d)(2) cannot initially be applied and compensation for the MHA should be computed in accordance with 5 U.S.C. 8114(d)(3).

8. Article 3 Management's Rights states:

The Employer shall have the exclusive right, subject to the provision of this Agreement and consistent with applicable laws and regulations.

Contentions:

1. Management violated Articles 3, 5, and 21 of the National Agreement along with 20 C.F.R. 10 by improperly calculating CCA COP and/or wage loss compensation.
2. The method for calculating COP for CCA's is found at 20 CFR 10.216(b)(2) and clarified in FECA Bulletin (FB 13-03) as stated above.
3. Management clearly miscalculated **[name]**'s COP and/or wage loss compensation as evidenced by the Form 50 showing the date of hire and pay

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stubs showing the weekly earnings [or documentation of earnings of another CCA if less than 11 months of employment for WLC].

4. Management calculated the weekly pay rate as [dollar amount]. Had management calculated it correctly using the provisions stated above, the grievant was entitled to a weekly pay rate in the amount of [dollar amount].
5. The Union contends this issue is an “obligation under the law” as defined by National Arbitrator Bernstein; therefore, management violated Article 5 of the National Agreement.
6. Letter Carriers who are injured on-the-job are guaranteed certain rights and protections by the National Agreement and Federal Law. When these rights are violated, Letter Carriers are harmed and caused undue hardship. Without the proper forms being provided and/or properly processed at the time of a traumatic injury, an employee’s Worker’s Compensation benefits could be delayed and/or denied for reasons that are out of the employee’s control. In this case, Letter Carrier [name] was forced to pay for his/her medical treatment out-of-pocket and [or explain any other undue hardship, if any].

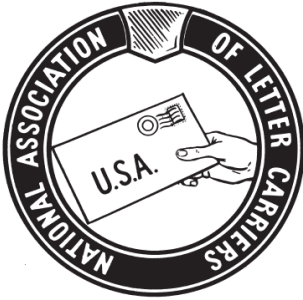
Remedy Requested (Block 19 of PS Form 8190):

1. Management cease and desist violating Articles 3, 5, and 21 of the National Agreement and 20 C.F.R. 10.
2. Management at [Station Name and Zip Code] take a training course on the proper procedures and management’s responsibilities regarding on-the-job injuries.
3. Letter Carrier [name] be made whole for any and all lost wages and benefits that occurred as a result of management’s actions.
4. Letter Carrier [name] be paid a lump sum of \$100.00 for undue hardship caused by management’s actions and to ensure future compliance of the parties.

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5. Management will make all payments associated with this case as soon as administratively possible, but no later than 30 days from the date of settlement and proof of payment will be provided to the Union.
6. Any and/or all remedies the Step B Team or Arbitrator deems appropriate.

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**National Association of Letter Carriers
Request for Information**

To: _____
(Manager/Supervisor)

Date _____

(Station/Post Office)

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 3, 5, 19, and 21:

1. Copies of any and all forms related to the on-the-job injury to Letter Carrier **[name]**.
2. TACS Employee Everything report for Letter Carrier **[name]** from **[dates(s)]**.

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.

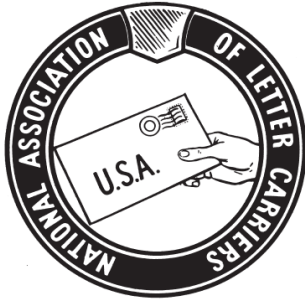
Sincerely,

Request received by: _____

Shop Steward
NALC

Date: _____

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**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,

Shop Steward
NALC

Request received by: _____
Date: _____

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PRIVACY ACT AUTHORIZATION AND

I authorize the NALC and/or its authorized representatives to disclose information received through the U.S. Department of Labor/Office of Workers' Compensation Programs deemed necessary to investigate and/or process grievances.

This authorization is effective on the date it is signed and is effective until revoked by me in writing. A copy of this authorization shall have the same force and effect as the signed original.

Signature of Claimant

Printed Name

Date

Privacy Act Statement: By signing this form you authorize the disclosure of your information regarding workers' compensation claims to the NALC and/or its representatives to investigate or to determine if a grievance exists. This form will be maintained by the NALC and will only be disclosed as part of a grievance should it be determined a violation of the National Agreement or FECA Regulations exists.

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