

Local Grievance # _____

Issue Statement (Block 15 of PS Form 8190):

Did management violate Articles 3, 5, and 21 of the National Agreement along with ELM Section 540 and EL-505 via Article 19 of the National Agreement and 20 C.F.R. 1 by failing to advise an injured employee of their right to choose a physician, 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]** reported the injury to Supervisor **[name]** on **[date]** at approximately **[time]**. This is documented by the written statement from Letter Carrier **[name]** in the case file.
3. Letter Carrier **[name]** was instructed by Supervisor **[name]** to seek medical treatment at **[name of contract facility]**. This is documented by the written statement from the grievant and copy of the physician's report in the case file.

4. 20 CFR 10.300(d) states:

The employer should advise the employee of the right to his or her initial choice of physician. The employer shall allow the employee to select a qualified physician.

5. The ELM 540 and EL-505 state in relevant part:

ELM 543.3

FECA guarantees the employee the right to an initial choice of physician.

ELM 544.112

In case of a traumatic injury, the supervisor must advise the employee of the following:

- a. *The right to select a physician of choice.*

ELM 545.21

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The control office or control point must advise the employee of the right to an initial choice of physician (see 543.3).

EL-505, Section 3.2

Immediately ensure that appropriate medical care is provided: Advise the employee of his or her right to treatment by a USPS contract medical provider or by a private physician or hospital of his or her choice.

EL-505, Section 3.3

FECA guarantees the employee the right to a free choice of physician.

EL-505, Section 3.9

Obligation: Ensuring Right to a Free Choice of Physician Initial medical examination and treatment must be authorized in accordance with FECA provisions and applicable OWCP regulations and policies governing medical care. FECA guarantees the employee the right to a free choice of physician.

EL-505, Section 3.10

Authorizing Medical Treatment in a Nonemergency — supervisor or ICCO

Obligation: Authorizing Medical Examination and/or Treatment

6. 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.

7. 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;

8. 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.

9. 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 ELM Section 540 and EL-505 via Article 19 of the National Agreement and 20 C.F.R. 1 by failing to advise the grievant of their right to choose a physician when they reported a traumatic injury to Supervisor **[name]**.
2. The provisions of the ELM 540 and EL-505 are crystal clear of management's obligation to inform the injured employee of their right to choose a physician to treat their injury. ELM 544.112 specifically states:

*In case of a traumatic injury, the supervisor **must** advise the employee of the following:*

- a. *The right to select a physician of choice. (**Emphasis added**)*

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3. Moreover, the Postal Service can only require the employee to be **examined** by a Postal physician but it is the employee that has the exclusive right to choose the physician who will provide **treatment**. Arbitrator Mittenthal issued a national level arbitration award on this issue (C-06462).
4. Letter Carrier **[name]** notified Supervisor **[name]** of his/her injury. At this point, the Supervisor was required to, among other things; advise, Letter Carrier **[name]** of their right to choose a physician. This did not happen in this case. Moreover, because management did not advise the grievant of their right, they did not comply with the other requirements of the language quoted above.
5. The Union contends this issue is an “obligation under the law” as defined by National Arbitrator Bernstein; therefore, management violated Article 3, 5, and 21 of the National Agreement, the ELM 540 and EL-505 via Article 19 of the National Agreement and 20 CFR 1.
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 **for explain any other undue hardship, if any**.

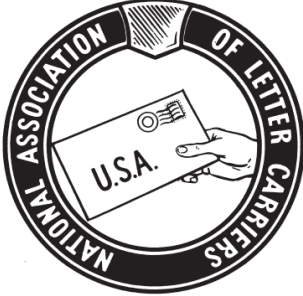
Remedy Requested (Block 19 of PS Form 8190):

1. Management cease and desist violating Articles 5 and 21 of the National Agreement, ELM Section 540 and EL-505 via Article 19 of the National Agreement and 20 C.F.R. 1.
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.

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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.
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.

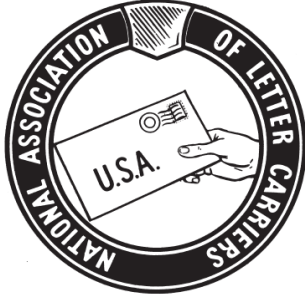
Sincerely,

_____ Request received by: _____

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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: _____

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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

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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.