

Local Grievance # _____

Issue Statement (Block 15 of PS Form 8190):

Did management violate Articles 3, 5, and 21 of the National Agreement along with the ELM 540 and EL-505 via Article 19 of the National Agreement and 20 C.F.R. 1 by failing to give notice of controversion and/or challenge to the injured employee, and if so, what should the remedy be?

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

Facts:

1. Letter Carrier **[name]** suffered an on-the-job injury on **[date]** at approximately **[time, if traumatic]** 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]** submitted a **[CA-1 or CA-2]** Claim for Compensation on **[date]**. This is documented by a copy of the claim form submitted.

4. 20 CFR 10.211(c) requires management to:

Inform the employee, of any decision to controvert COP and/or terminate pay, and the basis for doing so.

5. The following provisions of ELM 540 and the EL-505 state in relevant part:

ELM 544.12

The control office or control point must advise the employee whether COP will be controverted and whether pay will be interrupted.

ELM 545.731

Controversion means to dispute, challenge, or deny the validity of a claim. The Postal Service may controvert a claim by completing the indicated portion of Form CA-1 and submitting detailed information in support of the controversion to OWCP (see 545.75).

ELM 545.75

Proper identification of controverted claims is essential to permit the OWCP to give these claims priority in processing and to avoid the possibility of substantial, erroneous payments of regular pay. If a written

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explanation of the controversion is not of the submitted, OWCP may accept as factual the employee's report of injury.

When a claim is controverted, the control office or control point must ensure that the following actions are taken.... The employee, employee beneficiary, or representative must be furnished with a written explanation for the basis of the controversion.

EL-505, Section 8.5

Notify the employee, in writing, that his or her claim is being controverted or challenged (See Exhibit 8.5, Sample Letter: Employee's Notice of Controverted or Challenged Claim).

EL-505, Appendix C defines challenge and controversion:

Challenge: The formal administrative procedure through which USPS management presents evidence to OWCP to dispute any element of an employee's claim for benefits that appears questionable.

Controversion: The formal administrative procedure through which USPS management presents evidence to OWCP to dispute an employee's claim for COP.

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, EL-505 via Article 19 of the National Agreement and 20 C.F.R. 1 by failing to give notice of controversion and/or challenge and its basis to the grievant.

2. The provision of the EL-505 is crystal clear of management's responsibility to notify the injured employee in writing. Section 8.5 specifically states:

Notify the employee, in writing, that his or her claim is being controverted or challenged (See exhibit 8.5, Sample Letter: Employee's Notice of Controverted or Challenged Claim).

3. 20 CFR 10.211(c) further states management's obligation:

Inform the employee of any decision to controvert COP and/ or terminate pay, and the basis for doing so.

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4. Letter Carrier **[name]** filed a **[CA-1 or CA-2]** Claim for Compensation on **[date]**. Based on the language in the ELM 540, EL-505 and 20 CFR 10.211(c), management is obligated to notify the injured employee, in writing, the basis for controversy and/or challenge. This did not happen in this case. Thus, management was in violation of the Articles of the National Agreement mentioned above and 20 CFR 10.211(c).

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 unable to counter management’s challenge in a timely manner resulting in a delay of the adjudication of the claim 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, 19, 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.

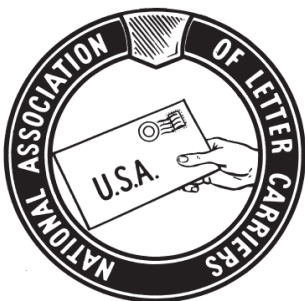
2. Management at **[Station Name and Zip Code]** take a training course on the proper procedures and management’s responsibilities regarding on-the-job injuries.

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.

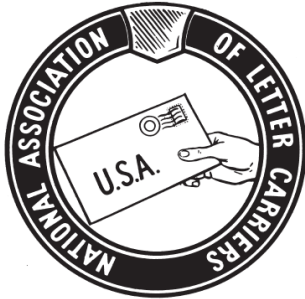
Sincerely,

Request received by: _____

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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