

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, via Article 19 of the National Agreement and 20 C.F.R. 1 by improperly contacting the injured employee's 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 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. Supervisor **[name]** contacted the grievant's physician on **[date]** at approximately **[time]**. This is documented by the written statement of **[name and position]**.
5. 20 CFR 10.506 states in relevant part:

*To aid in returning an injured employee to suitable employment, the employer may also contact the employee's physician in writing concerning the work limitations imposed by the effects of the injury and possible job assignments. **However, the employer shall not contact the physician by telephone or through personal visit.***

6. ELM 545.52 states in relevant part:

To aid in returning an injured employee to suitable employment, the control office or control point may also contact the employee's physician in writing concerning the work limitations imposed by the effects of the injury and possible job assignments. However, FECA prohibits contacting the physician by telephone or through a personal visit except for administrative purposes such as determining whether a fax has been received or ascertaining the date of a medical appointment.

Local Grievance # _____

7. The parties have agreed in two national-level settlements that phone contact initiated by the employer with the physician is prohibited. They state in relevant part:

Pre-arbitration settlement A94N-4A-C 97019738 (M-01428):

The Office of Workers' compensation Programs (OWCP), U.S. Department of Labor, issued new regulations governing the administration of the FECA effective January 4, 1999. The specific regulation that is germane to the instant case is 20 CFR 10.506 which specifically prohibits phone or personal contact initiated by the employer with the physician.

Step 4 settlement E94N-4E-C 98037067 (M-01385):

The first issue contained in this case is whether management violated the National Agreement when it telephonically contacted limited duty employee's physicians to receive information and/ or clarification on a carrier's medical progress....

The Office of Workers' Compensation Programs (OWCP), US Department of Labor, issued new regulations governing the administration of the FECA effective January 4, 1999. The specific regulation that is germane to the instant case is 20 CFR 10.506 which specifically prohibits phone or personal contact initiated by the employer with the physician.

8. 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.

9. 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*

Local Grievance # _____

Federal Employees' Compensation Act (FECA);

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

10. 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.

11. 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, via Article 19 of the National Agreement and 20 C.F.R. 1 by improperly contacting the injured employee's physician.
2. Management may argue that the language in the EL-505, Section 6.3 suggests the ICCO/HRM personnel should telephone physicians. However, the EL-505 was last revised in 1995 and predates the 20 CFR 10.506 and contract language above. Consequently, the language suggesting telephonic contact to a physician is obsolete.
3. Supervisor **[name]** improperly communicated with Letter Carrier **[name]**'s physician by telephone and/or in person on **[date]** at approximately **[time]** in direct violation of the Articles and national-level settlements stated above.

Local Grievance # _____

4. 20 CFR 10.506 is crystal clear of what the employer may and may not do. It states in relevant part:

The employer may monitor the employee's medical progress and duty status by obtaining periodical medical reports. Form CA-17 is usually adequate for this purpose. To aid in returning an injured employee to suitable employment, the employer may also contact the employee's physician in writing concerning the work limitations imposed by the effects of the injury and possible job assignments. (However, the employer shall not contact the physician by telephone or through personal visit.) When such contact is made, the employer shall send a copy of any such correspondence to OWCP and the employee, as well as a copy of the physician's response when received. The employer may also contact the employee at reasonable intervals to request periodic medical reports addressing his or her ability to return to work.

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 via Article 19 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. In this case, Letter Carrier **[name]** physician was improperly contacted by management resulting in the physician no longer willing to treat the grievant or management misreported the physician's words causing a delay of the adjudication of the claim and/or improper Limited Duty Job Offer **[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 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.

Local Grievance # _____

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.
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.

Local Grievance # _____



**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.

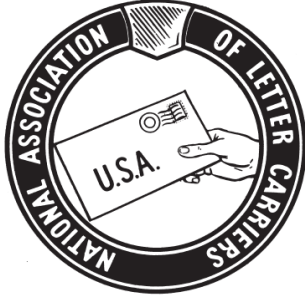
Sincerely,

_____ Request received by: _____

Local Grievance # _____

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: _____

Local Grievance # _____

<p>PRIVACY ACT AUTHORIZATION AND</p>

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

Local Grievance # _____

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.