

Local Grievance # _____

Issue Statement (block 15 of PS Form 8190):

Did management violate Articles 5 and 21 of the National Agreement along with ELM Section 540 and Handbook EL-505, *Injury Compensation* via Article 19 of the National Agreement and 20 C.F.R. 10 by failing to start and/or properly process Continuation of Pay (COP), 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. Section 541.2 of the ELM defines a traumatic injury as:

Traumatic injury — a condition of the body caused by external force, including stress or strain. The injury:

(1) Must be identifiable as to time and place of occurrence and member or function of the body affected.

(2) Must be caused by a specific event or incident, or series of events or incidents, within a single day or work shift.
3. 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 and/or the receipt of Form CA-1, *Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay/Compensation*.
4. Letter Carrier **[name]** elected COP on Form CA-1.
5. Management failed to provide the grievant **[name]** COP. This is documented by the copy of Form CA-1, TACS Employee Everything Report, and/or a copy of the grievant's check stub.
6. Article 21, Section 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);*
- *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.

Contentions:

1. Management violated Articles 5 and 21 of the National Agreement along with ELM Section 540 and Handbook EL-505 via Article 19 of the National Agreement and 20 C.F.R. 10 by failing to provide and/or properly process COP.

2. 20 C.F.R. 10 is the implementing regulations of the Federal Employees Compensation Act. Section 10.205 covers eligibility to receive COP and 10.220 addresses situations in which management is not required to start COP:

§10.205 What conditions must be met to receive COP?

(a) To be eligible for COP, a person must:

- (1) Have a "traumatic injury" as defined at §10.5(ee) which is job-related and the cause of the disability, and/or the cause of lost time due to the need for medical examination and treatment;*
- (2) File Form CA-1 within 30 days of the date of the injury (but if that form is not available, using another form would not alone preclude receipt); and*
- (3) Begin losing time from work due to the traumatic injury within 45 days of the injury.*

(b) OWCP may find that the employee is not entitled to COP for other reasons consistent with the statute (see §10.220).

§10.220 When is an employer not required to pay COP?

An employer shall continue the regular pay of an eligible employee without a break in time for up to 45 calendar days, except when, and only when:

- (a) The disability was not caused by a traumatic injury;*
- (b) The employee is not a citizen of the United States or Canada;*
- (c) No written claim was filed within 30 days from the date of injury;*
- (d) The injury was not reported until after employment has been terminated;*
- (e) The injury occurred off the employing agency's premises and was otherwise not within the performance of official duties;*
- (f) The injury was caused by the employee's willful misconduct, intent to injure or kill himself or herself or another person, or was proximately caused by intoxication by alcohol or illegal drugs; or*
- (g) Work did not stop until more than 45 days following the injury.*

3. Sections 543.41, 545.71, 545.721, and 545.732 of the ELM address the management's responsibilities when an employee requests COP as follows:

543.41 Continuation of Regular Pay

For most employees who sustain a traumatic injury, FECA provides that the employer must continue the employee's regular pay during any periods of resulting disability up to a maximum of 45 calendar days (see [545.72](#) for explanation of eligibility for COP). Such pay is subject to taxes and all other usual payroll deductions. If an employee elects COP and the claim is subsequently denied, any COP granted to the employee

must be charged to sick or annual leave or considered an overpayment of pay at the employee's option (see [437](#)).

545.71 General

FECA provides that the employer must continue regular pay during periods of disability up to a maximum of 45 calendar days for eligible employees who sustain traumatic injuries. Employees are not required to use their own sick or annual leave, unless the provisions of [545.73](#) or [545.74](#) apply.

545.721 Initial Disability for a Traumatic Injury

To be eligible for COP, an employee must:

- a. Have a traumatic injury.*
- b. File Form CA-1 within 30 days of the date of the injury and elect COP.*
- c. Begin losing time from work within 45 days of the injury.*

545.732 Controversion With COP Withheld

The Postal Service controverts (i.e., challenges or disputes validity) a claim and does not authorize COP when any one of the following circumstances is present:

- a. The disability was not caused by a traumatic injury.*
- b. No written claim was filed within 30 days from the date of injury.*
- c. The injury was not reported until after employment had been terminated.*
- d. The injury occurred off the employing agency's premises and was otherwise not within the performance of official duties.*
- e. The injury was caused by the employee's willful misconduct or intent to bring about injury or death to self or another person, or was proximately caused by the employee's intoxication by alcohol or illegal drugs.*
- f. The first absence caused by the injury occurred 45 days or more after the injury.*

4. The grievant notified Supervisor **[name]** of his/her injury and elected COP. At that point, the manager was required to, among other things, provide the grievant

with COP. This did not happen in this case. Moreover, because management did not provide COP, they did not comply with the other requirements of the language quoted above.

5. In all situations, except as described in Section [545.732](#) of the ELM above, the employer may controvert entitlement to COP, but must continue the employee's regular pay pending a final determination by OWCP. OWCP has the exclusive authority to determine questions of entitlement and all other issues relating to COP. In this case no exception under Section 545.732 of the ELM exists, and management did not provide COP.
6. Handbook EL-505 set out management's responsibilities to provide COP. The following language appears on page 8:

An employee's regular pay may be continued for up to 45 calendar days of wage loss because of disability and medical treatment following a traumatic injury. This is to ensure that the employee's income is not interrupted while the claim is being adjudicated.

The EL-505 goes on to state in Chapter 4 at page 80,

Obligation: Informing Injured Employees of Right to COP, Sick, or Annual Leave

A traumatically injured employee may elect to have COP for the first 45 calendar days of disability or to use sick or annual leave. This election must be made on the CA-1

Also at page 80 management is required to make any employee who chooses sick or annual leave rather than COP aware of their rights,

If the employee chooses sick or annual leave, ensure that the employee has been made aware of his or her rights and responsibilities (see Exhibit 3.5b, Sample Letter: Employee Rights, Responsibilities, and Choice of Physician).

Handbook EL-505 also requires the service to counsel the injured employee by use of Exhibit 3.5a found at pages 53, and 54.

7. 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 as well.
8. 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. 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, the grievant did not receive the pay (COP) he/she was entitled to under the law.

Remedy (block 19 of PS Form 8190):

1. That management cease and desist violating Articles 5 and 21 of the National Agreement along with ELM Section 540 and Handbook EL-505 via Article 19 of the National Agreement and 20 C.F.R. 10.
2. That management abide by ELM Section 540 and Handbook EL-505 at all times in the future.
3. That Letter Carrier **[name]** be made whole for any and all lost wages and benefits that occurred as a result of management's actions.
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.

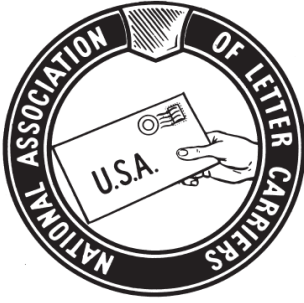
3. Included in the case file are **[Arbitration Awards/Step B decisions/local grievance settlements, etc.]** in which management was instructed/agreed to cease and desist failing to provide and/or properly process Continuation of Pay (COP).

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 failing to provide and/or properly process Continuation of Pay (COP). 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 this point.

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 as an incentive for future compliance.



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 15, and 19:

1. Copies of any and all Forms CA-1 and PS Forms 1769/301, *Accident Report* 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,

Shop Steward
NALC

Request received by: _____
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: _____