

## Local Grievance # \_\_\_\_\_

### Issue Statement (block 15 of PS Form 8190):

Did management violate Articles 5 and 21 of the National Agreement along with Section 540 of the ELM and Handbook EL-505, *Injury Compensation* via Article 19 of the National Agreement and 20 C.F.R. 10.506 by improperly contacting the grievant's physician and failing to provide copies of the correspondence to the grievant, 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]**.
2. Letter Carrier **[name]** physician was contacted by the Postal Service in writing/by telephone.
3. Letter Carrier **[name]** did not receive a copy of correspondence sent to physician nor did they receive the responses from the physician.
4. 20 C.F.R. 10.506 states:

*To aid in returning an injured employee to suitable employment, the employer may also contact the employee's physician in writing concerning 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.*

5. Section 515.52 of the ELM states:

*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.*

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. The Step 4 settlement in case number E94N-4E-C 98037067 (M-01385) states:

*The Office of Workers' Compensation Programs (OWCP), U.S. Department of Labor, issued new regulations governing the administration of the Federal Employees' Compensation (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.*

*The EL-505 Section 6.3 specifically states that the employee will be sent copies of such correspondence.*

9. 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 Section 540 of the ELM and Handbook EL-505 via Article 19 of the National Agreement and 20 C.F.R 10.506 by improperly contacting the grievant's physician and/or failing to provide copies of the correspondence to the grievant.
2. Section 544.12 of the ELM addresses the management's responsibilities when contacting the employee's physician:

*544.12 states: The control office must provide the employee a copy of all correspondence between the Postal Service and the treating physician.*

*545.52 states:*

*A copy of all written correspondence to the employee's physician and any response received must be sent to the OWCP and the employee*

Letter Carrier **[name's]** physician was contacted by the Postal Service. The Postal Service contacted the physician by letter. The letter was sent via fax to the physician's office. The treating physician responded to the request. Neither the questions asked nor the response was given to the Grievant.

## **OR**

Letter Carrier **[name's]** physician was contacted by the Postal Service by telephone. This is evidenced by the statement from the grievant included in the case file. The Postal Service failed to provide the questions asked or the response given to the Grievant.

3. Section 6.3 of Handbook EL-505 further explains management's responsibilities when contacting the treating physician:

*Send copies of such correspondence to the employee and to the OWCP district office, and forward copies of the physician's response to both, once it's received.*

4. The Union contends this issue is an "obligation under the law", specifically 20 C.F.R. 10.506, as defined by National Arbitrator Bernstein;; therefore, management violated Article 5 of the National Agreement as well.

**Remedy (block 19 of PS Form 8190):**

1. That management cease and desist violating Articles 5 and 21 of the National Agreement along with Section 540 of the ELM and Handbook EL-505 via Article 19 of the National Agreement and 20 C.F.R. 10.506.
2. That management abide by Section 540 of the ELM and Handbook EL-505 at all times in the future.
3. That Letter Carrier **[name]** will receive copies of all correspondence between the Postal service and the treating physician, or whatever 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 violating Article 21 of the National Agreement.

### **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 violating Articles 5, 19, and 21. 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 their claim.

**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 to serve 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, 16 and 19:

1. Copies of any and all correspondence between the Postal service and Letter Carrier **[name]** treating physician.

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: \_\_\_\_\_



## 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: \_\_\_\_\_