

Local Grievance # _____

Issue Statement (Block 15 of PS Form 8190):

Did management violate Articles 3, 5, 13, 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 provide an appropriate Limited Duty Job Offer 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]** 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]**'s claim was accepted by OWCP on **[date]**. This is documented by a copy of the Acceptance Letter from the Department of Labor.
4. Letter Carrier **[name]** received a Limited Duty Job Offer from management dated **[date]**.
5. The grievant was released to work with the following restrictions from their treating physician **[list restrictions]**. This is documented by a copy of the CA-17 and/or medical restrictions.
6. ELM 546.142 Obligation states:

When an employee has partially overcome the injury or disability, the Postal Service has the following obligation:

- a. *Current Employees. When an employee has partially overcome a compensable disability, the Postal Service must make every effort toward assigning the employee to limited duty consistent with the employee's medically defined work limitation tolerance (see 546.611). In assigning such limited duty, the Postal Service should minimize any adverse or disruptive impact on the employee. The following considerations must be made in effecting such limited duty assignments:*
 - 1) *To the extent that there is adequate work available within the employee's work limitation tolerances, within the employee's craft,*

Local Grievance # _____

in the work facility to which the employee is regularly assigned, and during the hours when the employee regularly works, that work constitutes the limited duty to which the employee is assigned.

- 2) If adequate duties are not available within the employee's work limitation tolerances in the craft and work facility to which the employee is regularly assigned within the employee's regular hours of duty, other work may be assigned within that facility.*
- 3) If adequate work is not available at the facility within the employee's regular hours of duty, work outside the employee's regular schedule may be assigned as limited duty. However, all reasonable efforts must be made to assign the employee to limited duty within the employee's craft and to keep the hours of limited duty as close as possible to the employee's regular schedule.*
- 4) An employee may be assigned limited duty outside of the work facility to which the employee is normally assigned only if there is not adequate work available within the employee's work limitation tolerances at the employee's facility. In such instances, every effort must be made to assign the employee's regular schedule and as near as possible to the regular work facility to which the employee is normally assigned.*
- b. Former employees. When a former employee has partially recovered from a compensable injury or disability, the Postal Service must make every effort toward reemployment consistent with medically defined work limitation tolerances. Such an employee may be returned to any position for which he or she is qualified, including a lower grade position than that which the employee held when compensation began.*

Note: Placement priority for rehabilitation assignment is the same as for limited duty.

7. ELM 545.31 states:

Control Office or Control Point Responsibility

Upon authorization of medical care, the control office or control point advises the employee, in writing, of the obligation to return to work as soon as possible. The term return to work refers to work in the employee's bid assignment or work in other locations and positions.

Notification to the employee must include the following:

- a. If a specific alternative position is available, the control office or control point must advise the employee in writing of the specific duties and physical requirements of the position.*
- b. If no specific alternative position is necessary, the control office or control point should advise the employee of any change the agency*

Local Grievance # _____

can make to the employee's permanent assignment to accommodate the employee's limitations due to the injury.

8. Section 7-4 of the EL-505 Offering a Limited Duty Assignment states

If a medical documentation indicates the employee is capable of performing limited duty, do the following:

- *Identify a limited duty assignment (see Exhibit 7.1, Limited Duty Assignment Guidelines).*
- *Ensure that the limited duty assignment is consistent with medically prescribed physical restrictions. Consult with OHNA, contract physician or the treating physician if you have any doubts (see Exhibit 6.1, Sample Letter: Limited Duty Availability).*

Offer a limited duty job assignment in writing and include the following information:

- *A description of the duties to be performed.*
- *The specific physical requirements of the position and any special demands of the workload or unusual working conditions.*
- *The organizational and geographical location of the job.*
- *The date on which the job will first be available.*

If the employee is at the work site and has not lost work time beyond the date of the injury, extend the offer immediately. If the employee is not currently working, initially offer the job by telephone and follow up with a written job offer (see Exhibit 7.4, Sample Letter: Limited Duty Assignments).

9. 20 CFR 10.507 states:

Where the attending physician or OWCP notifies the employer in writing that the employee is partially disabled (that is, the employee can perform some work but not return to the position held at date of injury), the employer should act as follows:

- a) *If the employee can perform in a specific alternative position available in the agency, and the employer has advised the employee in writing of the specific duties and physical requirements, the employer shall notify the employee in writing immediately of the date of availability.*
- b) *If the employee can perform restricted or limited duties, the employer should determine whether such duties are available or*

Local Grievance # _____

whether an existing job can be modified. If so, the employer shall advise the employee in writing of the duties, their physical requirements and availability.

- c) The employer must make any job offer in writing. However, the employer may make a job offer verbally as long as it provides the job offer to the employee in writing within two business days of the verbal job offer.*
- d) The offer must include a description of the duties position, the physical requirements of those duties, and the date by which the employee is either to return to work or notify the employer of his or her decision to accept or refuse the job offer. The employer must send a complete copy of any job offer to OWCP when it is sent to the employee.*

10. Article 13 of the National Agreement states in relevant part:

13.1.B The U.S. Postal Service and the Union recognizing their responsibility to aid and assist deserving full-time regular or part-time flexible employees who through illness or injury are unable to perform their regularly assigned duties, agree to the following provisions and conditions of reassignment to temporary or permanent light duty or other assignments. It will be the responsibility of each installation head to implement the provisions of this Agreement within the installation, after local negotiations.

13.4.A Section 4. General Policy Procedures

- A. Every effort shall be made to reassign the concerned employee within the employee's present craft or occupational group, even if such assignment reduces the number of hours of work for the supplemental work force. After all efforts are exhausted in this area, consideration will be given to reassignment to another craft or occupational group within the same installation.*
- B. The full-time regular or part-time flexible employee must be able to meet the qualifications of the position to which the employee is reassigned on a permanent basis. On a temporary reassignment, qualifications can be modified provided excessive hours are not used in the operation.*
- C. The reassignment of a full-time regular or part-time flexible employee to a temporary or permanent light duty or other assignment shall not be made to the detriment of any full-time regular on a scheduled assignment or give a reassigned part-time flexible preference over other part-time flexible employees.*
- D. The reassignment of a full-time regular or part-time flexible employee under the provisions of this Article to an agreed-upon*

Local Grievance # _____

light duty temporary or permanent or other assignment within the office, such as a type of assignment, area of assignment, hours of duty, etc., will be the decision of the installation head who will be guided by the examining physician's report, employee's ability to reach the place of employment and ability to perform the duties involved.

- E. *An additional full-time regular position can be authorized within the craft or occupational group to which the employee is being reassigned, if the additional position can be established out of the part-time hours being used in that operation without increasing the overall hour usage. If this cannot be accomplished, then consideration will be given to reassignment to an existing vacancy.*

11. 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.

12. 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;*

13. 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

Local Grievance # _____

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.

14. 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.

15. Section III – Agreement and Signatures of PS Form 2499 states:

“Supervisor/manager should discuss this Offer of Modified Assignment (Limited Duty) and the duties of the assignment with the employee. If the employee has concerns (e.g. task, work location, or medical limitations) not addressed with this offer of Modified Assignment (Limited Duty), the supervisor/ manager should discuss the concerns with the employee and, if possible, suggest alternatives. If the employee raises additional medical issues such as disability or seeks a reasonable accommodation, the supervisor/manager, must engage in an interactive discussion with the employee (see Handbook EL-307, Reasonable accommodation, An Interactive Process” for specific guidance). These discussions must be documented on page 2, Section IV of this form.”

Contentions:

1. Management violated Articles 3, 5, 13 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 provide an appropriate Limited Duty Job Offer.
2. The grievant received a Limited Duty Job Offer dated **[date]**. In Section II – Modified Assignment Offer of PS Form 2499 describes the duties the grievant must perform. However, these physical demands clearly exceed and/or fall outside Letter Carrier **[name]** restrictions as provided by their treating physician.
3. Handbook EL-505 specifically outlines management's responsibility when offering a Limited Duty Assignment and states in relevant part:

Local Grievance # _____

- *Ensure that the limited duty assignment is consistent with medically prescribed physical restrictions. Consult with the OHNA, contract physician, or the treating physician if you have any doubts (see Exhibit 6.1, Sample Letter: Limited Duty Availability).*
4. As stated above, management is obligated to provide a Limited Duty Job Offer as soon as possible when they are informed that an employee has partially overcome an injury or disability and can return to work in some capacity. In fact, they must make every effort in doing so and the Offer must be consistent with the medical restrictions provided by the physician. Based on the description of physical demands provided on the PS Form 2499, management has clearly misrepresented the actual physical requirements of the Offer.
 5. The Union contends this issue is an “obligation under the law” as defined by National Arbitrator Bernstein; therefore, management violated Article 3, 5, 13, and 21 of the National Agreement, the ELM 540 and EL-505 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. Without the proper forms being provided and/or properly processed at the time 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]** return to work efforts were unnecessarily delayed and caused an extension of the grievant being in LWOP status and **explain any other undue hardship, if any**.

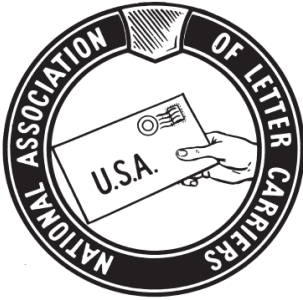
Remedy Requested (Block 19 of PS Form 8190):

1. Management cease and desist violating Articles 3, 5, 13 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.

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. Management will retract the Limited Duty Job Offer dated **[date]** and inform OWCP via letter explaining the offered duties, in fact, fall outside and/or exceed the grievant's medical restrictions.
7. 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: _____

Shop Steward
NALC

Date: _____

Local Grievance # _____



**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: _____

Local Grievance # _____

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.

Local Grievance # _____