

11.5 & 60 Hour Violations-Maximum work hours

The remedy of 50% and/or Cease and Desist language is not deterring management from working carriers in excess of the work hour limits.

The repeat violations are creating conflict and are damaging to all non-odl carriers forced to work beyond the 11.5 hours in a day and/or 60 hours in a service week.

To aid in this battle, please see the grievance starter below. For those offices who are filing continuous violation grievances, see below for additional remedies including to allow carriers the right to refuse work beyond the work hour limits without fear of discipline.

There is also an Interview Statement provided to ensure carriers detail the personal harm they are facing by repeatedly exceeding the work hour limits.

Management has failed to adequately staff many offices across the country and instead carriers are being worked beyond the limits agreed to on a consistent basis.

It is our hope that filing these grievances and applying Article 15 for non-compliance, will provide for suitable remedies to stop all future violations.

The 50% remedy was intended to apply in only limited circumstances, however, in this case, the employer's violations of the controlling provision is ongoing and willful. The national parties contemplated compliance with the agreement and not defiance. The reckless behavior warrants and demands a greater remedy, to be measured on a case-by-case basis.

One such remedy is to allow the employee to go home when he/she hits the limit, as we wrote into our grievance settlement. Such employee should not be subject to discipline. Management should be required to notify the employees of their right to refuse work over the limit and that they cannot be disciplined for doing so.

{If a non-otdl carrier is worked beyond the 11.5/60hour limits these arguments should be in addition to any other article 8 grievance-including 8.5.F.}

Local Grievance # _____

ISSUE STATEMENT (Block #15 on PS Form 8190):

Did Management violate Article 8, Section 5.G, ELM Section 432.32 and/or M-00859 via Article 19 of the National Agreement by working City Carriers over the maximum hours allowed in a service day on **[Date]** and/or in a service week during the period **[Date]** through **[Date]** at the **[Station/Post Office]**, and if so, what should the remedy be?

UNION FACTS AND CONTENTIONS (Block #17 on PS Form 8190):

Facts:

1. Letter Carrier **[Name]** has not signed up to work overtime and is designated as non-otdl.
2. Letter Carrier **[Name]** worked **[# of hours]** hours in a service day on **[Date]**.
3. Letter Carrier **[Name]** worked a total of **[Hours]** during the week of **[Date]** through **[Date]**.

[Repeat Fact #1 through #3 for each Non-OTDL who worked over 11.5 hours in a service day or 60 hrs in a service week]

4. These facts are verified by the Time and Attendance Collection System (TACS) Employee Everything Report (EER) for each letter carrier involved in this case. Copies of each letter carrier's EER are included in the case file.
5. Article 8, Section 5.G of the National Agreement states:

Full-time employees not on the "Overtime Desired" list may be required to work overtime only if all available employees on the "Overtime Desired" list have worked up to twelve (12) hours in a day or sixty (60) hours in a service week. Employees on the "Overtime Desired" list:

1. may be required to work up to twelve (12) hours in a day and sixty (60) hours in a service week (subject to payment of penalty overtime pay set forth in Section 4.D for contravention of Section 5.F);
2. and 2. excluding December, shall be limited to no more than twelve (12) hours of work in a day and no more than sixty (60) hours of work in a service week.

However, the Employer is not required to utilize employees on the "Overtime Desired" list at the penalty overtime rate if qualified employees on the "Overtime Desired" list who are not yet entitled to penalty overtime are available for the overtime assignment.

6. Article 8 of the 2022 Joint Contract Administration Manual (JCAM) states in part beginning on page 8-19:

*Maximum Hours- 60 Hour Limit. National Arbitrator Mittenenthal ruled in H4N-NA-C 21 "Fourth Issue," June 9, 1986 (C-06238) that **the 12-hour and 60-hour limits are absolutes**—a full-time employee may neither volunteer nor be required to work beyond those limits. This rule applies to all full-time employees on the ODL or Work Assignment List except during the Penalty Overtime Exclusion Period (December).*

Limitations regarding full-time employees not on the ODL or Work Assignment List, PTF's and CCAs are governed by ELM Section 432.32. ELM Section 432.32 rules apply during the penalty overtime exclusion period (December). (Step 4, E94N-4E-C 96031540, February 25, 1998, M-01272).

The 12/60 limitations are inclusive of all hours, including any type of leave taken, consistent with the 20-hour overtime limit (see M-00859 below)

Accordingly, holiday leave pay is credited toward the 12/60 limitation. Additionally, if an employee works on a holiday for which holiday leave is paid, those hours worked in excess of the holiday leave hours paid would also count toward the 12/60 limit (Step 4, I90N-4I-C-94023487, June 9, 1994, M-01180).

On October 19, 1988 the national parties signed the following Memorandum of Understanding (M-00859):

The parties agree that with the exception of December, full-time employees are prohibited from working more than 12 hours in a single work day or 60 hours within a service week. In those limited instances where this provision is or has been violated and a timely grievance filed, full-time employees will be compensated at an additional premium of 50 percent of the base hourly straight time rate for those hours worked beyond the 12 or 60 hour limitation.

The employment of this remedy shall not be construed as an

agreement by the parties that the Employer may exceed the 12 and 60 hour limitation with impunity. (emphasis added)

As a means of facilitating the foregoing, the parties agree that excluding December, once a full-time employee reaches 20 hours of overtime within a service week, the employee is no longer available for any additional overtime work.

Furthermore, the employee's tour of duty shall be terminated once he or she reaches the 60th hour of work, (emphasis added) in accordance with Arbitrator Mittenenthal's National Level Arbitration Award on this issue, dated September 11, 1987, in case numbers H4NNA-C 21 (3rd issue) and H4C-NA-C 27 (C-07323).

National Arbitrator Snow held in A90N-4A-C 94042668, November 30, 1998 (C-18926) that the Memorandum of Understanding above (M00859) provides the exclusive remedy for violations of the 12 and 60 hour work limits in Article 8.5.G.2.

Article 8.5.G Violations During a Service Week. *The remedy of 50 percent of the base hourly straight-time rate provided in the Memorandum above applies for each hour worked in excess of twelve on a service day (excluding December) by a full-time employee. The remedy of 50 percent of the base hourly straight-time rate also applies for each hour worked by a full-time employee in excess of the sixty during the same service week (excluding December) in which the full-time employee has exceeded twelve hours in a service day. For example, if during the same service week a full-time employee worked 14 hours on Monday and ended up with 62 hours for the week on Friday, four hours would have been worked in violation of the Article 8.5.G restrictions. The appropriate remedy in this example would be four hours of pay at 50 percent of the base hourly straight-time rate—two for Monday and two for Friday. In this example, the carrier should have been instructed to "clock off" and go home on Friday when the sixtieth hour was reached. The employee would then be paid any applicable guarantee time for the remainder of the service day. In those circumstances where the same work hours of a full-time employee simultaneously violate both the twelve hour and sixty hour limits, only a single remedy of 50 percent of the base hourly straight time rate is applied. For example, if a full-time employee worked 14 hours on Friday, resulting in a 62 hour workweek, only two hours would have been worked in violation of the Article 8.5.G restrictions. The appropriate remedy in this example would be two hours of pay at 50 percent of the base hourly straight time rate (Step 4, J94N-4J-C 99050117, September 6, 2001, M-01445).*

Maximum Hours-12 hour limit. *The overtime limits in Article 8.5.G apply only to full-time regular and full-time flexible employees. However, ELM Section 432.32 provides the following rule that applies to all employees:*

Except as designated in labor agreements for bargaining unit employees or in emergency situations as determined by the postmaster general (or designee), employees may not be required to work more than 12 hours in 1 service day. In addition, the total hours of daily service, including scheduled workhours, overtime, and mealtime, may not be extended over a period longer than 12 consecutive hours. Postmasters and exempt employees are excluded from these provisions. (Emphasis added)

Because this language limits total daily service hours, including work and mealtime, to 12 hours, all letter carriers not on the ODL or Work Assignment List (including PTF's and CCA's) are effectively limited to 11 ½ hours per service day. This is true whether or not a meal break is taken. This rule also applies during the penalty overtime exclusion period. (December)

7. The ELM section 432.32 (Maximum hours allowed) states:

Except as designated in labor agreements for bargaining unit employees or in emergency situations as determined by the postmaster general (or designee), employees may not be required to work more than 12 hours in 1 service day. In addition, the total hours of daily service, including scheduled workhours, overtime, and mealtime, may not be extended over a period longer than 12 consecutive hours. Postmasters and exempt employees are excluded from these provisions.

Contentions:

1. Management violated Article 8, Section 5.G, ELM Section 432.32 and/or M-00859 via Article 19 of the National Agreement by working letter carriers as listed above in excess of 11.5 hours in a service day on **[Date]** and/or 60 hours during the week of **[Date]** through **[Date]**.
2. Management's contractual violation(s) in this case has/have caused harm to the grievant(s). When Letter Carrier's rights are disregarded trust is eroded between employee and employer, resulting in an atmosphere of disrespect at the workplace. The union has included statements from the letter carriers forced to work in excess of the contractual limits to show the harm these violations have caused.
3. The schedules included in the file along with the TACS reports show that management continued to schedule and require the full-time carriers to perform overtime in excess of the 11.5 and/or 60 hour limit.

4. The union contends that M-00859 is clear and unambiguous regarding management's contractual obligation once a full-time employee has reached the maximum hour limitation. Under this MOU, the national parties have agreed that a full-time employee is **PROHIBITED** from working more than 12 hours in a single day. In addition, once a full-time letter carrier reaches 20 hours of overtime within a service week, the employee is no longer available for any additional overtime work.
5. The national parties agreed in Step-4 Settlement for case number J94N-4J-C 99050117, September 6, 2001 (M-01445), that employees who have reached their contractual limit must be instructed to end their shift. It is rare that parties to an agreement use the word "MUST", but that is exactly what the national parties did here, to make sure no one exceeded the 12/60 work hour limits. This settlement states in relevant part:

"Further, we agreed that the remedy also applies to each hour worked by a full time employee in excess of the sixty during the same service week (excluding December) in which the full time employee has exceeded twelve hours in a service day. **To avoid such payment, management must instruct the full time employee to "clock off" and go home; the full time employee would then be paid whatever guarantee applies for the remainder of the service day.**"

6. The union contends that management has failed to abide by the language in M-00859 and M-01445 which requires them to instruct letter carriers who have reached their work hour limitations to end their shift. Based on management's ongoing refusal to adhere to the language with which they voluntarily agreed to when these agreements were signed, the union contends that letter carriers have a right to end their shift upon reaching the contractual limits without fear of corrective or disciplinary action. This right of refusal applies to full-time letter carriers not on the OTDL who have reached 11.5 hours in a service day, their 20th hour of overtime in a service week, or their 60th hour in a service week.

Remedy (Block #19 on PS Form 8190):

1. That management at the **[Station/Post Office]** cease and desist from future violations of Article 8, Section 5.G, ELM Section 432.32 via Article 19 of the National Agreement.

2. Instruct management to immediately terminate the tour of duty of a non-otdl letter carrier who reaches their 11.5 hours in a service day or 60th hour of work in accordance with M-00859 and Arbitrator Mittenthal's National Level Arbitration Award on this issue, dated September 11, 1987, in case numbers H4NNA-C 21 (3rd issue) and H4C-NA-C 27 (C-07323).
3. That Letter Carrier(s) **[Name, Name, and Name]** each be compensated at an additional premium of 50% of the base hourly straight time rate for those hours worked beyond the 11.5 hour daily work hour limitations and/ or the 60-hour limitation as follows:

[List names and amounts]

4. 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.
5. 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/management makes the argument of remedies requested are improper:

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/local grievance settlements in the case file when they failed to terminate the employee's tour of duty once they reached the 11.5 hour daily work hour limits and/or worked 20 hours of overtime /reached the 60 hour limit in a service week, 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 8, Section 5.G of the National Agreement and/or ELM Section 432.32 via Article 19 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 Article 8, Section 5.G of the National Agreement and/or ELM Section 432.32 via Article 19 of the National Agreement. 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.

3. The dispute in this case centers not only on the violation(s) of the aforementioned articles and Mittenthal award, but also on the remedy for repeated, willful violations of the same contract provision(s), after prior grievances have been settled instructing management to comply with the provision(s). Management may assert there can be no other remedy than that which makes the affected employee(s) whole for demonstrated losses suffered as a result of the violation and the additional 50% compensation. The Union contends that non-monetary remedies and/or injunctive relief is allowed and appropriate where applicable.

Any argument from the Postal Service that the National Agreement does not provide for a remedy in the event of a violation of Article 8.5.G or ELM 432.32 must be rejected.

In case number WIN-SG-C 24783 (C-04543), Arbitrator W. Eaton opined:

It is an ancient and accepted maxim of law in any form, be it common law, statutory law, or the law and practice of collective bargaining, that, "without a remedy, there is no right." The parties to the National Agreement did not fashion empty provisions, nor did they intend that violation of the rights therein provided should occur, or continue without impunity.

United States Supreme Court-Steelworkers v Warrior & Gulf CO
(Steelworkers Trilogy) on Page 4 states in part:

An order to arbitrate the particular grievance should not be denied unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute. Doubts should be resolved in favor of coverage.

As National Arbitrator Gamser observed in Case No. NC-S-5426:

" . . .to provide for an appropriate remedy for breaches of the terms of an agreement, even where no specific provision defining the nature of such remedy is to be found in the agreement, certainly is found within the inherent powers of the arbitrator."

It is wholly appropriate to construct a non-compensatory remedy for a contract violation. Remedies can be something other than a monetary, such as a cease and desist. The non-monetary remedies are meant to set a path to avoid violations without paying money to the harmed individuals. However, management's established pattern of conduct demonstrates a willful and deliberate act of non-compliance with both the collective bargaining agreement and the aforementioned arbitration awards/prior settlements. The Service has refused to commit to, and adhere to, any non-monetary remedy. The additional 50% compensatory remedy was not intended to, nor does it provide for management to have an unfettered right to work carriers in excess of the maximum contractual hours. Furthermore, management may not act with impunity.

Remedy:

1. That management cease and desist violating Article 15 of the National Agreement.
2. That carriers have the "right to refusal" when requested and/or instructed to work beyond the contractual maximum hours limitations.
3. That management shall inform all letter carriers at the installation in writing that they are permitted to clock out, without disciplinary consequence, when they reach a daily or weekly working hours limit, and provide a copy of the document including signatures of those present during the standup talk, to the Union.
4. That Letter Carrier(s) **[Name], [Name], and [Name]** each be paid a lump sum of \$100.00 as an incentive for future compliance, or any remedy the arbitrator deem appropriate to stop future similar violations.

Name _____ Cell # _____
Station _____ Route # _____
Date _____

Non-OTDL carriers are being scheduled/required to work beyond the daily work hour limits of 11.5 hours and more than 60 hours in a service week.

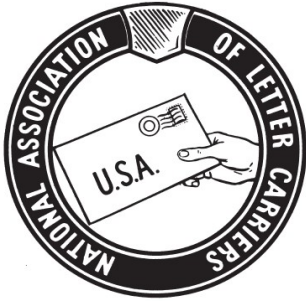
1. Are you a Non-OTDL letter carrier? _____
2. Have you been scheduled/required to work beyond the 11.5 hour limit in a service day? _____ If yes, list date(s). _____

3. Have you been scheduled/required to work beyond 60 hour limit in a service week? _____ If yes, list what week(s). _____

4. Is this the first time you have been scheduled to work beyond the work hour limits as you noted above? _____
5. If you were scheduled and required to exceed the above work hour limits, how has that affected you/your personal life? _____

6. Do you want to work Overtime? _____ If not, why not? _____
7. Do you have anything else to add? _____

SIGN _____ DATE _____



National Association of Letter Carriers Request for Information

To: _____
(Manager/Supervisor)

Date _____

(Station/Post Office)

Manager/Supervisor _____,

Pursuant to Articles 17 and 31 of the National Agreement, I am requesting the following information to investigate a grievance concerning a violation of Article 8 of the National Agreement:

1. TACS Employee Everything reports for Carrier(s) **[Names]** from **[date]** through **[date]**.
2. Copy of the Daily/Weekly Schedule(s) for **[date]** through **[date]**.

I'm 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: _____
(Manager/Supervisor)

Date _____

(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: _____