



## STEP B DECISION

**Step B Team: Oscar A. Obregon** Decision: **Resolved**

 **Steve Amrhein** USPS Number: **J06N-4J-C 10346230**

Grievant: **Class Action**

NALC Number: **108-10**

 Branch: **489**

Installation: **Anderson**

**District: Greater Indiana District** DeliveryUnit: **Main Office**

 State: **Indiana**

Incident Date: **8/21/2010**

Date Informal Step A Initiated:**09/15/2010**

Formal Step A Meeting Date:**09/23/2010** Date Received at Step B: **9/30/2010**

Step B Decision Date: **10/21/2010**

Issue Code: **05.0000 19.0000**

Subject Code: **100108**

Original Step B Received Date:

Date Sent to Assisting Team:

**ISSUE:** Was there a violation of Article 5 and 19 of the National Agreement (NA) when they instructed carriers to use equipment improperly? If so, what is the appropriate remedy?

**DECISION:** The Dispute Resolution Team (DRT) has **Resolved** this grievance.

 There is no violation when Management directed that Advos and Great Deals will be placed in the 1046-P for routes.

 There is no violation when Management required carriers to load their vehicles at the designated parking spots rather than at the dock.

 Management shall permit carriers to place upside down flat tubs in the bottom of their 1046-P to address bending issues.

 Allowing the use of a platform truck (nutter) to transport mail from the carrier case to the dock to load is one way in which Management can provide Reasonable Accommodations for carriers who request and qualify for Reasonable Accommodations under the Rehabilitation Act.

**EXPLANATION:** Based on the case file submitted to the DRT, on August 21, 2010 local Postal management in the Anderson City Post Office implemented a change in the method that letter carriers use to load their LLV’s for their street duties, requiring carriers to load vehicles where they are parked rather than at the dock. On September 9, 2010 Management removed the flat tubs in the 1046-P and replaced them with letter trays.

 The DRT agrees the Union did not prove how placing Advos and/or Great Deals violates the National Agreement or that it is a persuasive safety concern.

 The DRT agrees Management did not violate the National Agreement when they required carriers to take the mail to their vehicles to load rather than loading at the dock. The DRT refers to the M-39 Section 125 which states in part:

125.1 **Loading Carrier Vehicles**

**The carrier should take all mail for delivery to the vehicle at the same time using a hamper or other assigned conveyance**. Avoid extra trips to the vehicle unless they are absolutely necessary due to the quantity of mail. **After clocking onto street time, carriers should proceed directly to their vehicles and load the mail in an orderly fashion**.(emphasis added) When loading the vehicle, parcels must be arranged in delivery sequence where they will be convenient to the carrier. On curbline routes, the working trays of letter and flat mail should be placed on the vehicle’s working shelf with the addresses faced so the carrier can easily read them. Flat mail is placed to the right of the letter mail. On park and loop routes, trayed letters and flats must be placed in a sequential order so that the carrier can quickly identify the mail for each loop. After loading the carrier must take empty equipment and parcels missorted to the route to a location designated by the delivery unit manager.

125.2 **Loading Times**

125.21 **General**

Where a motorized delivery unit does not have a ramp and loading times have been assigned to reduce congestion, carriers should be required to observe their assigned loading times.

125.22 **Daily Supervision**

Delivery unit managers must supervise loading area activities daily to prevent

operational delays.

125.23 **Load at Assigned Space**

***Where a dock has a ramp*, vehicles should be loaded at their assigned parking spaces.**(emphasis added) When loading at the dock is necessary, the unit manager must stagger loading to avoid lost waiting time.

125.24 **Transport Mail to Vehicles**

Mail for curbline or park and loop routes must be placed in hampers or other suitable conveyances for transporting to the loading point.

 The DRT also agrees the change of loading location does not violate a past practice even though the Union contends they have been loading at the dock for 20 years. The DRT agrees since the previous practice does not implement contract language, clarify unclear or ambiguous language, or implement a separate condition of employment, it does not qualify as a binding past practice. The DRT agrees there is clear contractual language that states carriers are to load their vehicles at their assigned parking space when a ramp is available. There is a ramp at the Anderson Post Office. Refer to page 5-3 of the 2009 JCAM:

**Functions of Past Practice**

In the same paper, Arbitrator Mittenthal notes that there are three distinct

functions of past practice:

**To Implement Contract Language.** Contract language may not be sufficiently

specific to resolve all issues that arise. In such cases, the past practice

of the parties provides evidence of how the provision at issue should

be applied. For example, Article 15, Section 2, Step 3 of the 1978

National Agreement (and successor agreements through the 2000 National

Agreement) required the parties to hold Step 3 meetings. The contract language,

however, did not specify where the meetings were to be held.

Arbitrator Mittenthal held that in the absence of any specific controlling

contract language, the Postal Service did not violate the National

Agreement by insisting that Step 3 meetings be held at locations consistent

with past practice. (N8-NAT-0006, July 10, 1979, C-03241)

**To Clarify Ambiguous Language.** Past practice is used to assess the

intent of the parties when the contract language is ambiguous, that is,

when a contract provision could plausibly be interpreted in one of several

different ways. A practice is used in such circumstances because it is an

indicator of how the parties have mutually interpreted and applied the

ambiguous language. For example, in a dispute concerning the meaning

of an LMOU provision, evidence showing how the provision has been

applied in the past provides insight into how the parties interpreted the language.

If a clear past practice has developed, it is generally found that the

past practice has established the meaning of the disputed provision.

**To Implement Separate Conditions of Employment.** Past practice can

establish a separate enforceable condition of employment concerning

issues where the contract is “silent.” This is referred to by a variety of

terms, but the one most frequently used is *the silent contract*. For example,

a past practice of providing the local union with a file cabinet may

become a binding past practice, even though there are no contract or

LMOU provisions concerning the issue.

 The DRT agrees Pre-Arbitration Settlement Q98N-4Q-C 00099268 allows for more than one way to address the issues of lifting items out of a 1046-P. Carriers shall be permitted to use inverted flat tubs in their 1046-P. Refer to the settlement which states in part:

The parties agree that placing inverted plastic trays in the bottom of the 1046-P hamper as an insert is one way, **among others**,(emphasis added) to address any local bending and lifting concerns.

 The DRT also agrees when employees request Reasonable Accommodation, Management must follow the established procedures as outlined in EL-307:

2 The Reasonable Accommodation

Process

21 Questions About Reasonable Accommodation

Qualified individuals with disabilities may require reasonable accommodation

during the application process, during the course of their employment with

the Postal Service, or both. Requests for reasonable accommodation can be

made orally or in writing by the individual or by someone on behalf of the

individual.

Questions concerning reasonable accommodation arise in three instances:

􀂄 When an applicant requests reasonable accommodation in the

examination or hiring process.

􀂄 When you are deciding whether an applicant will be able to perform the

job with or without reasonable accommodation.

􀂄 When an employee requests reasonable accommodation to perform

his or her current job.

To request an accommodation, an individual may use plain language and

need not mention the Rehabilitation Act or use the phrase “reasonable

accommodation.” An employee can make a request for accommodation to

his or her supervisor or manager or the Manager, Human Resources

(District). A job applicant may make a request for accommodation to the

examiner, selecting official, or Manager, Human Resources (District).

The reasonable accommodation process is activated whenever:

􀂄 A request for reasonable accommodation is made by the employee or

applicant, or someone acting on behalf of the employee or applicant.

􀂄 An employee with a known physical or mental impairment is observed

having difficulty performing the essential functions of his or her job

because of an impairment.

When you receive an accommodation request, you must process the request

promptly, using the guidance contained in this handbook. Whether the

request is made orally or in writing, you must act promptly (see subchapter

24 for time frames for processing requests). Engage the requestor in an

informal dialogue to determine exactly:

􀂄 The accommodation requested.

􀂄 The reason for the request.

􀂄 The nature of the impairment and the major life activity affected.

􀂄 The essential functions that require accommodation.

􀂄 Whether the need for accommodation is time sensitive.

Alternatively, you may refer the request to your district or area Reasonable

Accommodation Committee (RAC) for processing, as appropriate (see

Chapter 6, Role of the Reasonable Accommodation Committee).

You must refer a request for accommodation to the RAC when an employee

has requested an accommodation or modification of his or her work

assignment or job duties based on a medical reason, and one or more of the

following is true:

􀂄 You are not certain if the impairment rises to the level of a disability

under the Rehabilitation Act.

􀂄 You have questions concerning the reasonableness of the

accommodation requested and whether it poses an undue hardship.

􀂄 You need help finding a way to accommodate the individual.

􀂄 You believe the request for accommodation should be denied.

􀂄 You are considering separating the employee for inability to perform

the functions of his or her position.

In addition, referral is appropriate when an individual with an obvious or

known disability is observed having difficulty performing the essential

functions of his or her job due to that disability. In these cases, you must

advise the employee of the referral to the RAC. Referral to the RAC is also

appropriate when an Appointing Official questions the medical suitability of

an applicant.

Note: Not all requests for accommodation need to be referred to a RAC.

For example, if an employee requests specialized equipment, such as an

ergonomic chair, and local management can provide the equipment

expeditiously, there is no need for RAC involvement.

Verbal requests for reasonable accommodation should be documented for

local record keeping and to ensure that every request receives a timely

decision (see Exhibit 2-1, Confirmation of Request for Reasonable

Accommodation, and Exhibit 2-2, Reasonable Accommodation Decision

Guide).

Exception: Once an employee requests and is granted a type of

reasonable accommodation that he or she is likely to need on a repeated

basis (e.g., a sign language interpreter), then documentation for recordkeeping

purposes is not required each time the accommodation is

needed (see subchapter 26).

Whenever the reasonable accommodation process is activated, you must go

through a five-step process to determine whether to provide an

accommodation to the job applicant or the employee. The steps are as

follows:

􀂄 Step One: Determine whether an individual has a disability.

􀂄 Step Two: Determine the essential functions of the job.

􀂄 Step Three: Identify the abilities and limitations of the individual.

􀂄 Step Four: Identify potential accommodations.

􀂄 Step Five: Determine the reasonableness of the accommodations and

select options.

Each step is discussed in detail in subchapter 22.

Remember that the interactive process may require you to consult and work

with a number of different people, including the individual, medical and

safety personnel, human resources and rehabilitation specialists, and

supervisors and managers.

The five-step interactive process is not required if it is definitively clear that

an individual is not a qualified individual with a disability. For example, an

individual with a temporary condition such as pregnancy or a broken leg is

not a qualified individual with a disability (see 141.3).

The DRT agrees it is not unreasonable for Management to permit a carrier to use a nutter to transport their mail to the dock and load their mail from that location if they qualify for Reasonable Accommodations.

 The DRT agrees Management did not violate Article 31 of the National Agreement by denying the Union’s request to photograph the 1046-P with Advos in them since the Union did not provide relevancy of the request. Management wrote on the request asking for the Union’s intent and motive of the request. There is no statement of the issue on the request and the case file does not indicate the Union provided Management with the relevancy of the request. Refer to Step 4 Settlement of NC-S-5482 states:

The judicious use of a camera to establish or refute a grievance may facilitate resolution of some problems. However, if the union desires to take photographs on the work room floor, permission must first be obtained from local management, and a supervisor must be present. If management deems it necessary to take evidential photographs, it would also be prudent to have a steward or union official present.

 **\_\_\_\_ \_\_\_\_\_\_**

 **Oscar A. Obregon, USPS Steve Amrhein, NALC**

**CC: Step A Parties:**

**Gregory Felts, Steward NALC Branch 489**

**Randy Brown, Mgr Customer Services**

**Manager District Labor Relations Patrick C. Carroll, NBA – NALC**

**Area Labor Relations,** Rochelle D. Israel  **File DRT# 6032**

**Document list: 108-10 / J06N-4J-C 10346230**

PS Form 8190

Union Table of Contents

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