

# OSHA judge comes through



**Manuel L. Peralta Jr.**

In my April 2013 column, I addressed the citation issued by OSHA in the July 24, 2012, heat-related death of Kansas City, MO Branch 30 member John Watzlawick. A trial was held before Judge Peggy S. Ball of the U.S. Occupational Safety and Health Review Commission in February of 2014 and her decision was recently issued.

She clearly found the employer's agents in the wrong. She made credibility determinations:

**i. "Heat is No Excuse"**

From the very top of the management chain down to the floor supervisor, the message was clear: heat is not an excuse for performance issues.

Mr. Behrends, the acting Officer-In-Charge at the time of the incident...gave sworn testimony that Gail Hendrix and Steve Erbland told him and other managers that heat does not matter and that employees should be able to perform within their expected delivery parameters regardless of the weather...This is further supported by the series of emails that were sent between the various managers in the Mid-America District. That message was relayed to lower-level supervisors, such as Mr. Harvey and Mr. Dyer, who, in turn, conveyed the same message to the letter carriers.

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**“Considering the amount of information available to [USPS] regarding heat hazards, the Court also finds that [the USPS] should not be entitled to any credit for good faith....”**

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In the penalty portion of the decision, Judge Ball wrote:

In determining the appropriate penalty for affirmed violations, section 17(j) of the Act requires the Commission to give due consideration to four criteria...Gravity is the primary consideration and is determined by the number of employees exposed, the duration of the exposure, the precautions taken against injury, and the likelihood of an actual injury... It is well established that the Commission and its judges conduct *de novo* penalty determinations and have full discretion to assess penalties based on the facts of each case and the applicable statutory criteria...[OSHA] proposed the maximum penalty of \$70,000.00 for Citation 1, Item 1. This

assessment was based on the fact that: (1) [USPS] is a very large employer, with approximately 8,000 employees in the Mid-America District alone; (2) the gravity of the violation was high due to the significant risk of injury, the lack of meaningful protections, the fact that all employees at the Truman Station were exposed to the hazard, and the fact that multiple employees became sick, or, in J.W.'s case, died; (3) Respondent did not exhibit good faith; and (4) [USPS] had a history of violations in the recent past. (Tr. 551-55). The Court agrees with the assessment of [OSHA]...In this case, numerous employees were exposed to the hazard of excessive heat without being properly equipped with adequate training and resources to prevent, recognize, and treat heat-related illnesses. Considering the amount of information available to [USPS] regarding heat hazards, the Court also finds that [the USPS] should not be entitled to any credit for good faith....

**Judge Ball got it right. We thank her for seeing the truth.**

The question for our membership is: What type of discipline would you expect to receive if you were responsible for the death of another human being?

We know that the USPS has received a copy of the decision, and I would bet that it has been brought to the attention of top brass.

My question for Postmaster General Patrick Donahoe is: What are you prepared to do?

Will you direct your team to challenge the decision and hide the fact that your managers were not truthful—or will you hold them accountable for their lack of honesty? Do you have the courage and leadership necessary to charge your team with the death of John Watzlawick?

Will you continue to focus your team on numbers at the expense of the hardworking men and women who carry mail, or will you pay attention to the fact that we are constantly exposed to hazards, including weather extremes, and make it a priority to protect letter carriers from all possible harm?

**I want to take this opportunity to personally thank OSHA Area Director Barbara Theriot and her team at the Kansas City office, as well as Chuck Gordon, attorney at the Office of the Solicitor of the U.S. Department of Labor, and his team for all the hard work leading the judge to see the truth between the fantasy Post Office painted by management and the real Post Office that our carriers experience each and every day.**

**I fully anticipate that the Postal Service will appeal this OSHA Review Commission decision, but not because the facts and judgment are wrong.**

I expect the Postal Service to appeal this decision because it refuses to accept responsibility for the actions of its managers, which directly led to the death of John Watzlawick and the injury of three other letter carriers.