

Interpretive disputes



**Paul
Barner**

In my January and May *Postal Record* articles, I discussed several interpretive disputes and how they are handled once received here at Headquarters. In this column, I will provide you with the process on how a matter is referred as an interpretive dispute and those items we currently have under review.

Article 15.2.Step B (e) of the National Agreement provides:

If either party's representative at Step B or the NBA or Employer's Area representative thereafter maintains that the grievance involves an interpretive issue under the National Agreement, or some supplement thereto which may be of general application, the issue will be discussed with the appropriate National Union/

Management Representatives at the Headquarters Level. If either party's National Representative determines the issue to be interpretive, a written notice will be sent to the other party specifying in detail the facts giving rise to the dispute, the precise interpretive issues to be decided and the initiating party's contention. The grievance(s) shall be held at the Step B level pending discussion at the national level or the outcome of a National Arbitration Award.

If either member of the Step B team, the national business agent (NBA) or USPS area representative believes that an impasse grievance involves an interpretive issue, they can forward it to their appropriate national union/management representative.

In recent months, the Postal Service has notified the NALC that the following matters were referred for review of a possible interpretive issue in accordance with Article 15. The following matters have been reviewed and the grievances should no longer be held:

- The issue for review was whether the Heat Illness Prevention Program (HIPP) training was required by the collective-bargaining agreement. After review, the Postal Service notified NALC that a national interpretive issue is not presented in the referenced case.
- The issue for review was the inclusion of certified mail in Delivery Point Sequence (DPS) trays. After review, the Postal Service notified NALC that a national interpretive issue is not presented in the referenced case.
- The issue for review was the accuracy of time-keeping on the Mobile Delivery Device (MDD). After review, the Postal Service notified NALC that a

national interpretive issue is not presented in the referenced case.

The above-listed matters, and any case being held during the review, were released back to the step at which they were held to be processed through the grievance procedure.

In recent months, the NALC has notified the Postal Service that the following matters were referred for review of a possible interpretive issue in accordance with Article 15.

- The issue for review involved the use of National Agency Check with Inquiries (NACI) to separate an employee who has completed their probationary period. The NALC provided the Postal Service with the following notice:

After reviewing the matter, it is determined a national interpretive issue is not presented in this case. The NALC refers to National Arbitration Award A01N-4A-D 05098663, before Arbitrator Das, when a case falls under the above issue. The term "reasonable cause" should be used when determining whether an employee may be removed under the circumstances present in this case.

Once NALC released the NACI case and any held grievances, the Postal Service then issued a hold on the same case and any referenced grievances. The Postal Service now states the following:

After reviewing the matter, the Postal Service has determined there is a national interpretive issue present. The issues surrounding a National Agency Check with Inquiries (NACI) are distinguishable from the decision rendered by Arbitrator Das.

Currently the referenced NACI case and any other grievance referencing management removing a carrier who has passed their probationary period after an unfavorable NACI review is being held at all steps of the grievance procedure.

The Postal Service has provided notice for the below issue and after review of a possible interpretive issue, it has determined that an interpretive issue does exist.

- **MDD/Arrow Key:** The issue concerns the use of the MDD to scan Arrow Keys in and out. This has been declared an interpretive issue after the Postal Service reviewed the case as the handbooks and manuals do not allow for the MDD to be utilized in this regard.

(continued on page 59)

According to Section 232.1, the route examiner must:

- a. Not set the pace for the carrier, but should maintain a position to observe all delivery points and conditions.
- b. Not suggest or forbid any rest or comfort stops but should make proper notations of them.
- c. Not discuss with the carrier on the day of inspection the mail volume or the evaluation of the route. These matters must be discussed with the carrier at a later date when all data has been reviewed and analyzed.
- d. Make notations on the day of inspection on the appropriate form or separate sheet of paper of all items that need attention, as well as comments on the day of inspection. Also list any comments or suggestions for improving the service on the route, as well as suggestions or comments made by the carrier during the course of the inspection for improvement in delivery and collection service.
- e. Make comments and suggestions clearly, and in sufficient detail for discussion with the carrier and for decision-making purposes. The manager who will actually discuss the results with the carrier must have enough facts and figures to reach a final decision on any necessary adjustments to the route.

The national parties have agreed that there is no standard for performing street delivery; therefore, route examiners should not attempt to set the street pace for letter carriers. This is prohibited by *M-39*, Section 232.1.a and is reinforced by the memorandum of understanding (MOU) M-00304.

M-00304 states in pertinent part:

In keeping with the principle of a fair day's work for a fair day's pay, it is understood that there is no set pace at which a carrier must walk and no street standard for walking.

Letter carriers should perform their street duties exactly as they do every other day. Route examiners should simply observe and take

notes of carriers performing their street duties. Handbook M-41 Section 915 addresses this as follows: In order that a fair and reasonable evaluation may be made by management, carriers must perform their duties and travel their routes in precisely the same manner on inspection day as they do throughout the year.

Route examiners should not prohibit letter carriers from taking comfort stops. Reasonable comfort stops are considered a typical part of a letter carrier's day and, as such, should not be deducted from the recorded street time. USPS and NALC have agreed to this principle in M-00242, which reads:

Management should not deduct reasonable comforts/rest stops from the total street time during route inspections if deduction of the time is contrary to pass local practice. If excessive time for comforts/rest stops is deducted, the matter should be discussed with the carrier.

Letter carriers experiencing route examiner conduct inconsistent with the handbook provisions described in this article should consult with a shop steward or union representative so the situation can be investigated.

As discussed in July, union representatives should familiarize themselves with Chapter 2 of the *M-39* and Chapter 9 of the *M-41* to gain a better understanding of the route count and inspection process. These handbooks, as well as additional resources, are available on the NALC website. They include the *2018 NALC Guide to Route Inspections and the NALC Route Protection Program*, available at nalc.org/workplace-issues/city-delivery/route-adjustments. National-level settlements and memorandums of understanding can be found in the Materials Reference System (MRS) at nalc.org/mrs. Past Contract Talk articles pertaining to these issues are available at nalc.org/workplace-issues/resources/nalc-publications.

Executive Vice President

Interpretive disputes (continued)

(continued from page 48)

The following matters are being reviewed by NALC. Notification will be provided once a determination has been made on whether or not an interpretive issue has been identified.

- **Pre-arbitration settlements—precedent setting:** The issue involves pre-arbitration settlements and whether or not they are precedent setting for the installation in which they occurred, even absent “non-precedent-setting” language. The NALC is reviewing the issue to deter-

mine if an interpretive dispute has been presented.

- **Blue Hampers/S&DC:** The issue involves the use of “blue hampers” at S&DCs. USPS is reviewing the issue to determine if an interpretive dispute has been presented.

As always, NALC will provide updates on any future developments regarding these cases, as well as any additional interpretive disputes that may arise. Please check out the *Activist* article referencing interpretive issues.

Hope you have a great rest of the year.