

Local Grievance #: _____

Issue Statements (Block 15 of PS Form 8190):

1. Did management violate National Settlement M-01597 via Article 15 and the Employee Labor Relations (ELM) Handbook via article 19 of the National Agreement by placing **[Name]** on the “deems desirable” option in ERMs and if so, what should be the remedy?

Union Facts and Contentions (Block 17 of PS Form 8190):

Facts: (many of these items could be placed in Block 16, if management agrees)

1. Management in the **[installation name and Station]** placed City Carrier **[name]** on the “deems desirable option in ERMs.
2. The grievant notified management of his/her inability to work on **[date(s)]** per a phone call to the call in number (877-477-3273) on **[date]**.
3. M-01597 states in part:

A supervisor's determination that medical documentation or other acceptable evidence of incapacitation is desirable for the protection of the interest of the Postal Service must be made on a case by case basis, must be consistent with the provisions of ELM 513.361 and may not be arbitrary, capricious, or unreasonable.

Availability of this eRMS option does not expand or diminish supervisory authority, or change policy concerning medical documentation in any way.

4. Post Office Leave Management for Labor Relations Professionals, eRMS Technology Principles of Leave Management dated October 2008 states in part:

Supervisors will be required to make a comment as to why the Deems Desirable option has been active.

5. In eRMS, management has the ability to set a date range for the “Deems Desirable” option.
6. In eRMS, management has the ability to set the next review date for the employee.
7. “Deems Desirable” is an option in eRMS that automatically requires documentation upon call-in.

8. M-00704 states in part:

However, management should inform employees prior to placing them on restricted sick leave that their usage of sick leave demonstrates a pattern of abusing the use of sick leave.

9. Employee Labor Relations Manual (ELM) section 513.11 **Purpose- Sick Leave for Employee Incapacitation** states in part:

Sick leave insures employees against loss of pay if they are incapacitated for the performance of duties because of illness, injury, pregnancy and confinement, and medical (including dental or optical) examination or treatment.

10. Employee Labor Relations Manual (ELM) section 513.331 **Requests for Sick Leave-General** states in part:

Except for unexpected illness or injury situations, sick leave must be requested on PS Form 3971 and approved in advance by the appropriate supervisor.

11. Employee Labor Relations Manual (ELM) section 513.332 **Unexpected Illness or Injury** states in part:

An exception to the advance approval requirement is made for unexpected illness or injuries; however, in this situation the employee must notify appropriate postal authorities of his or her illness or injury and expected duration of the absence as soon as possible.

When sufficient information is provided to determine that the absence may be covered by the Family and Medical Leave Act (FMLA), the following Department of Labor forms will be mailed to the employee's address of record along with a return envelope:

12. Employee Labor Relations Manual (ELM) section 513.361 **Sick Leave Documentation Requirements- Three Days or Less** states in part:

For periods of absence of 3 days or less, supervisors may accept the employee's statement explaining the absence. Medical documentation or other acceptable evidence of incapacity for work or need to care for a family member is required only when the employee is on restricted sick leave (see 513.39) or when the supervisor deems documentation desirable for the protection of the interests of the Postal Service. Substantiation of the family relationship must be provided if requested.

13. Employee Labor Relations Manual (ELM) section 513.362 **Over Three Days** states in part:

For absences in excess of 3 days, employees are required to submit medical documentation or other acceptable evidence of incapacity for work or of need to care for a family member and, if requested, substantiation of the family relationship.

14. Employee Labor Relations Manual (ELM) section 513.364 Medical Documentation or Other Acceptable Evidence states in part:

When employees are required to submit medical documentation, such documentation should be furnished by the employee's attending physician or other attending practitioner who is performing within the scope of his or her practice. The documentation should provide an explanation of the nature of the employee's illness or injury sufficient to indicate to management that the employee was (or will be) unable to perform his or her normal duties for the period of absence. Normally, medical statements such as "under my care" or "received treatment" are not acceptable evidence of incapacitation to perform duties.

15. Employee Labor Relations Manual (ELM) section 513.91 Restricted Sick Leave-Reasons for Restriction states in part:

Supervisors or installation heads who have evidence indicating that an employee is abusing sick leave privileges may place the employee on the restricted sick leave list. In addition, employees may be placed on the restricted sick leave list after their sick leave use has been reviewed on an individual basis and the following actions have been taken:

- a. Establishment of an absence file.*
- b. Review of the absence file by the immediate supervisor and higher levels of management.*
- c. Review of the absences during the past quarter of LWOP and sick leave used by employees. (No minimum sick leave balance is established below which the employee's sick leave record is automatically considered unsatisfactory.)*
- d. Supervisor's discussion of absence record with the employee.*
- e. Review of the subsequent quarterly absences. If the absence logs indicate no improvement, the supervisor is to discuss the matter with the employee to include advice that if there is no improvement during the next quarter, the employee will be placed on restricted sick leave.*

16. Employee Labor Relations Manual (ELM) section 513.92 Restricted Sick Leave-Notice and Listing states in part:

Supervisors provide written notice to employees that their names have been added to the restricted sick leave listing. The notice also explains that, until further notice, the employees must support all requests for sick leave by medical documentation or other acceptable evidence (see 513.364).

17. Employee Labor Relations Manual (ELM) section 513.93 Restricted Sick Leave- Recision of Restriction states in part:

Supervisors review the employee's PS Form 3972 for each quarter. If there has been a substantial decrease in absences charged to sickness, the employee's name is removed from the restricted sick leave list and the employee is notified in writing of the removal.

Contentions:

1. Management in the **[installation name and Station]** placed City Carrier **[name]** on the "deems desirable" option in ERMs. (see interview/ reports)
2. The grievant notified management of his/her inability to work on **[date(s)]** per a phone call to the call in number (844-477-3273). (See interview/ statements)
3. In eRMS, management set a date range of **[date to date]** for the "Deems Desirable" option for City Letter carrier **[name]**. (see interview/ reports)
4. Management has required documentation from City Letter Carrier **[name]** when returning to work after his/ her absence.
5. Management required Medical documentation from City Letter Carrier **[name]**.
6. Management gave **[reason(s)]** to place City Letter carrier **[name]** on the "Deems desirable" option in eRMS.
7. Management never told or gave written notice to City Letter carrier **[name]** PRIOR to placing them on the "Deems Desirable" option in eRMS.
8. Management has not taken the necessary steps, outlined in ELM Section 513.391, to place City Letter carrier **[name]** on Restricted Sick Leave. (See interview).
9. When management marked City Letter carrier **[name]** as "Deems Desirable" for an extended period of time, they essentially placed him/her on Restricted Sick Leave without following the required steps outlined in ELM 513.391.
10. When management "deems" documentation required under ELM Section 513.361, it must be done under the following guidelines:
 - It cannot conflict with leave regulations contained in ELM 510.
 - It governs management of a present, single absence of 3 days or less.

- It must be on a case-by-case basis.
- It may not be arbitrary or capricious.
- The “Deems Desirable” option should not be activated for any extended period of time, but should remain active only for each specific absence for which management can fulfill their burden that the interests of the Service needs to be protected. It should be deactivated immediately thereafter. Activation of the “Deems Desirable Option” in eRMS should not be made in lieu of placement on the Restricted Sick Leave List.
- Deems Desirable does not allow a policy to request documentation for all instances of intermittent leave; rather it is for specific absences on a case-by-case basis.

11. In obtaining the medical documentation, improperly required by management, City Letter carrier **[name]** incurred expenses he/she would not have otherwise. He/she had to pay \$**[Copay amount]** for the medical appointment. Additionally, he/she drove **[distance]** round-trip miles to get to the appointment.
12. City Letter carrier **[name]** has a good overall attendance record with no indication of abuse of sick leave. Management acted arbitrarily and capriciously in requiring medical documentation for the absence.
- 13.

Remedy:

1. Management shall Cease and Desist violating ELM Section 513.361.
2. Management shall Cease and Desist using “Deems Desirable” in lieu of placing carriers on Restricted Sick Leave.
3. City Letter carrier **[name]** shall be made whole for any and **all costs** associated with obtaining the requested documentation, including but not limited to, payment of \$**[mileage reimbursement at GSA Rate]** and \$**[Copay amount]**.

Add the following issue statement, facts, contentions, and remedy request if we can prove the violation is repetitive:

Issue Statement:

Did management violate Article 15.3.A of the National Agreement along with policy letter M-01517 by failing to comply with the prior Step B decisions or local grievance settlements in the case file, and if so, what should the remedy be?

Facts:

1. Article 15.3.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 improperly placing carriers on the "deems desirable" option in ERMs, and/ or requesting documentation for a sick call/ unscheduled absence.

Contentions:

1. Management violated Article 15.3.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 Articles 15 and/or 19. 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 their claim.

Remedy:

1. That management cease and desist violating Article 15 of the National Agreement.
2. That Letter Carrier(s) [Name], [Name], and [Name] each be paid a lump sum of \$100.00 to serve as an incentive for future compliance.



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 Articles 15 and 19:

1. Copy of PS Form 3971 for **[date(s)]** Letter Carrier **[name]** call-in for.
2. Copy of **[date]** and **[time]** Letter Carrier **[name]** call-in to eRMS
3. Copy of TACs employee everything report for Letter Carrier **[name]** for **[date(s)]**
4. Copy of Letter Carrier **[name's]** FMLA paperwork. (if applicable)
5. Copy of Letter Carrier **[name]** Key Indicator Report.
6. A copy of the Leave Usage Log List.
7. A copy of the Removed Leave Log List.
8. A copy of the Denied Leave Log List.
9. A copy of Letter Carrier **[name]** 3972's for the last two years.
10. Any information, instructions, records, files and/ or documentation used in association with eRMS/ Deems Desirable to place Letter Carrier **[name]** on "Deems Desirable".

I am also requesting a mutually acceptable time to interview the following individuals within the next three (3) days:

1. Supervisor **[Name]**
2. Postmaster **[Name]**
3. Letter Carrier **[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 contact me immediately.

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 contact me immediately.

Sincerely,

Shop Steward
NALC

Request received by: _____

Date: _____



National Association of Letter Carriers Supervisor/ Postmaster Interview Questions

Steward doing interview _____ Date _____

1. Please state your name and current job for the record?
2. How long have you worked at the **[POST OFFICE]** in that job?
3. Do you know Letter Carrier **[name]**: How long have you worked with him/ her?
4. On what date(s) was Letter Carrier **[name]** absent from work?
5. On what day(s) did Letter Carrier **[name]** call in to the eRMS call in number and/ or call the supervisor/ postmaster to report their absence(s)?
6. When did management place Letter Carrier **[name]** on "Deems Desirable" in eRMS: Who placed Letter Carrier **[name]** on "Deems Desirable" in eRMS?
7. What reason was put into eRMS for justification to place Letter Carrier **[name]** on "Deems Desirable":
8. What "Deems Desirable" date range was put into eRMS for City Letter Carrier **[name]**?
9. Does Letter Carrier **[name]** have any FMLA approved cases? What are the dates for these approved cases?

10. Does any of the date(s) Letter Carrier **[name]** was absent qualify under those FMLA cases?
11. Does any the absences of Letter Carrier **[name]** qualify or potentially qualify for FMLA if he/ she does not have an approved FMLA cases? What did you do to see if this is the case?
12. What discussions did you have with Letter Carrier **[name]** prior to placing them on "Deems Desirable" option in eRMS? On what dates di you have those discussions?
13. What date did management inform Letter Carrier **[name]** that he/ she was being placed on "Deems Desirable" in eRMS? Did management give the reason at that time?
14. Do you know what the Employee Labor Relations (ELM) manual is?
15. What part of the ELM was used to place Letter Carrier **[name]** on "Deems Desirable" in eRMS?
16. What type of documentation was requested from Letter Carrier **[name]** for the absences?
17. When was Letter Carrier **[name]** informed that medical documentation or other suitable evidence was needed for the absences?

18. For absences of three (3) days or less, what is the protection you are using to justify placing Letter Carrier **[name]** on “Deems Desirable”?
19. When did you place Letter Carrier **[name]** on restricted sick leave per ELM 513.391?
20. What type of leave did Letter Carrier **[name]** request for **[dates]**?
21. Where is the copy of the Written Notice provided to the employee explaining that they have been added to Restricted sick leave and all requests for sick leave must be supported by medical documentation or other acceptable evidence?
- 22.



National Association of Letter Carriers Supervisor/ Postmaster Interview Questions

Steward doing interview _____ Date _____

1. Please state your name and current job for the record:

2. How long have you worked at the **POST OFFICE** in that job:

3. What day(s) were you absent from work:

4. When did you inform management that you would miss those day(s):

5. How did you inform management:

6. What type of leave did you request for those date(s):

7. Do you currently have a FMLA case: What date was it approved:

8. Do you think the day(s) you called in would qualify for your approved FMLA case or a new FMLA case:

9. When/ if calling in eRMS, did you get told documentation
 - a. may/ might be necessary
 - b. was necessary
 - c. other

10. Were you contacted by management after calling in to eRMS: Who: What was said:

11. Did management ever tell you that you were being placed on "Deems Desirable" in eRMS?
12. What reason(s) were given to place you on "Deems Desirable"?
13. What type of documentation did management tell you was needed:
14. What type of documentation did you provide:
15. What did management say to you after providing the documentation:
16. Did you have to go to the doctor to get the required documentation:
17. What is your co-pay for doctors' visits:
18. How many miles does it take you to get to and from your doctor office:
19. How many miles does it take you to get to the post office:
- 20.



National Association of Letter Carriers “Deems Desirable” grievance checklist

Grievance # _____ Grievant: _____ EIN: _____

1. Date and time of call-in to eRMS: _____
2. Date(s) the grievant was off work and the type of leave used _____
 - a. Clock rings included? Y or N
3. Did the grievant have FMLC protection prior to the call-in to eRMS: Y or N
 - a. If “yes”, what was the date of the most recent FMLA documentation: _____
 - b. Does the FMLA condition call for “intermittent” absences? Y or N
 - i. If “yes” how often? _____
 - c. Is a copy of the FMLA documentation included? Y or N
4. What was the grievant told at the time of call-in to eRMS?
 - a. Medical documentation may/ might be necessary upon returning to work
 - b. Medical documentation was necessary upon returning to work
 - c. Other _____
5. Was the grievant contacted by management **AFTER** the call-in to eRMS? Y or N
 - a. If “yes”, who contacted them: _____ When: _____
 - b. How were they contacted? _____
 - c. What were they told? _____
6. Did the grievant receive discussion(s) **PRIOR** to being placed on “Deems Desirable”? Y or N
 - a. If “yes”, when, and who: _____
 - b. What was said during the discussion(s) _____
 - c. Was a Steward present during discussion(s)? Y or N
7. Did the union submit an Information Request for all material that management used to

determine that the grievant be placed on "Deems Desirable"? Y or N

8. Did the union conduct an Investigative Interview with the Supervisor and / or Postmaster to determine why the grievant was placed on "Deems Desirable"? Y or N

9. What reason did management state for placing the grievant on "Deems Desirable"? _____

10. Was a 3972 and/ or 3971's provided by management to support their reason(s)? Y or N

11. Did the absence(s) relate to the reason the grievant was placed on "Deems Desirable"? Y or N

a. If "no", why not, and what was the grievant charged with? _____

12. Did the grievant follow instructions and provide medical documentation? Y or N

a. If "no", why not, and was there further action by management? _____

b. If "yes", when did the grievant go to the doctor/ hospital/ walk in unit, etc.? _____

1. Doctor's name and address: _____

2. Mileage to and from the grievant's home to doctor's Office: _____

a. Use map quest report and include

3. Time spent for travel to and from, waiting and office visit; ___ HR ___ MIN

4. Cost/ Co-pay paid by the grievant to obtain documentation, include all testing as a result of visit (include copies): \$ _____

13.