NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration between UNITED STATES POSTAL SERVICE and AMERICAN POSTAL WORKERS UNION, AFL-CIO	)	Supplemental Award Case No. Q06C-4Q-C 11182451

BEFORE: Shyam Das

APPEARANCES:

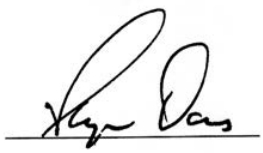
For the Postal Service:	Kevin B. Rachel, Esq. Robert E. Ocasio, Labor Relations Specialist
For the APWU:	Darryl J. Anderson, Esq.
Place of Hearing:	Videoconference
Date of Hearing:	September 13, 2022
Date of Award:	March 16, 2023
Relevant Contract Provisions:	Article 32.2
Contract Year:	2010-2015
Type of Grievance:	Contract Interpretation

Supplemental Award Summary:

(1) The above Findings, which are incorporated in this Award, highlight and elaborate the unique factual and contractual basis on which the 2016 Merits Award in this case was decided and the remedy therein granted.

(2) When I issued my 2016 Merits Award, my jurisdiction to decide and remedy particular grievances was limited to the Step 4 dispute presented to me which related to 212 specified violations of Article 32.2.B.

(3) The National interpretative issue presented to me and decided in the 2016 Merits Award, however, intrinsically was broader than and not confined to those 212 specified violations of Article 32.2.B. This was reflected in the remedy granted in the Merits Award, as set forth in the above Findings..



Shyam Das, Arbitrator

I issued a merits Award in this case on August 18, 2016 [Merits Award], which included a retention of jurisdiction relating to implementation of the remedy provided for therein. The APWU has invoked my retained jurisdiction. The parties disagree as to the scope of my Merits Award.

The following excerpt from the August 18, 2016 Merits Award is helpful in laying out the relevant factual and contractual context in which the present scope dispute has arisen (footnotes have been omitted):

BACKGROUND

> This grievance was filed by the APWU on April 19, 2011, alleging that the Postal Service had continuously violated the provisions of Article 15 and 32 by notifying the National Union of Highway Contract Renewal (HCR) contracts after they have been let. The Union cited 212 violations that occurred in 2010. The Union asked for a comprehensive remedy requiring that the 110 disputed routes remaining in service be converted from HCR routes to PVS routes for the regular HCR contract period of four years. The Union is also seeking compensation for the time after the violations when the routes have remained in service as HCR routes. [The Union's requested remedy included a cease and desist order and that the parties be instructed to meet and seek to reach an agreement on a remedy for all like or related violations of Article 32.2 that have occurred since the filing of the dispute in this case and that are the subject of a pending dispute between the parties.]
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> The parties exchanged 15-Day letters on May 31, 2011. At an initial arbitration hearing on September 4, 2014, the Postal Service requested bifurcation to determine whether the remedy for violations of Article 32.2 previously had been adjudicated, Case No. Q94V-4Q-C 96044758 (Das 2004), hereinafter referred to as the St. Petersburg Award. On March 16, 2015, I issued an Interim Award in the present case, which included the following Findings:
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> [Start of Excerpt from 2015 Interim Award Included in Merits Award]
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> > In my 2004 St. Petersburg Award, which involved an admitted Article 32.2 notice violation involving work in St. Petersburg, I rejected the Union's contention that a uniform compensatory remedy such as it was seeking was required in all such cases. [The Union took the

position in the St. Petersburg case that, in addition to monetary compensation equal to the pay received by the contractor's employees, the HCR contract had to be canceled and the work given to the Motor Vehicle Craft.] I held that "a determination that one remedy fits all Article 32.2 notice violation cases is not warranted." I provided a list of factors "an arbitrator conceivably could properly consider in fashioning a remedy for a violation of Article 32.2 of the sort at issue in this case." The statement of my Award was as follows:

> The National Agreement does not mandate the remedy sought by the Union for notice violations under Article 32.2. The issue of remedy in the underlying grievance involving HCR 33549 in St. Petersburg is remanded to the local level, including regional arbitration if necessary.

The grievance in that particular case, as in the present case, was initiated at Step 4. Article 32.2 notice violation grievances prior to the St. Petersburg case, to my knowledge, had been filed and grieved locally and -- if they went to arbitration -- were arbitrated at the regional level. I treated the issue of remedy as one that would turn mostly on local facts, which in a case like that -- which the Postal Service claimed was an isolated instance of a notice violation -- was appropriate. In that case, I did not focus on the fact that notice under Article 32.2 and the procedure triggered by such notice occurs at the National level, that is, between Postal Headquarters and the National Union.

Res judicata does not apply in this case. In St. Petersburg the Union was seeking a uniform remedy for every Article 32.2 notice violation regardless of other circumstances. I ruled against that. Here, the Union asserts the need and right to obtain an effective remedy at National arbitration for what it alleges is a systemic and pervasive failure by the Postal Service at the National level to provide the required Article 32.2 notice in literally hundreds of cases. The Union alleges that the Postal Service knowingly and repeatedly violated Article 32.2 and characterizes the Postal Service's action as, in effect, an abrogation of the parties' contract. Whatever the merits of the Union's contentions or its proposed remedy, this grievance raises different issues than the St. Petersburg case. Moreover, the Union's

complaint really cannot be addressed on a case-by-case basis particularly at the regional arbitration level. The St. Petersburg Award rejected the notion of one remedy fits all Article 32.2 notice cases. It did not address the issue of a comprehensive remedy for the sort of National level violation of Article 32.2 alleged by the Union in this case.

The Postal Service further argues that the Union has not identified an interpretive issue to be decided in this case, pointing out that there is no dispute regarding the language of Article 32.2 and that the issue of remedy was presented and decided in the St. Petersburg Award.

To be sure, the Union cannot simply consolidate multiple separate notice violation claims each of which needs to be considered on its own merits with respect to whether there was a violation and, if so, what is the appropriate remedy. That would not raise an interpretive issue. But if the evidence establishes what the Union alleges in this case -- a wholesale abrogation or disregard of the notice requirements in Article 32.2 by the Postal Service at the National level -- then the issue of whether the Postal Service's actions or inactions warrant the sort of comprehensive and extraordinary remedy the Union seeks -- which can only be obtained in National arbitration -- could constitute an interpretive issue for purposes of Article 15. . . .

* * *

Accordingly, I conclude that National arbitration of this grievance is not barred by res judicata and that, as set forth above, this grievance may present an interpretive issue properly to be decided in National arbitration. That will depend on the evidence developed at a hearing on the merits.

INTERIM AWARD

The arbitrability or jurisdictional issues raised by the Postal Service in opposition to arbitration of the Union's Step 4 grievance in this case are resolved on the basis set forth in the final paragraph of the above Findings.

[End of Excerpt from 2015 Interim Award Included in Merits Award]

There is no dispute that the Postal Service has nearly always used two types of services side by side for highway movement of mail: Highway Contract Services, which are contracted services, and Postal Vehicle Services (PVS) which is made up of APWU MVS craft employees. Article 32.2.A provides:

> The American Postal Workers Union, AFL-CIO, and the United States Postal Service recognize the importance of service to the public and cost to the Postal Service in selecting the proper mode for the highway movement of mail. In selecting the means to provide such transportation the Postal Service will give due consideration to public interest, cost, efficiency, availability of equipment, and qualification of employees.

Article 32.2 requires the Postal Service to provide the Union at the National level with notice, which includes certain information, prior to the installation of HCR service so that the Union can provide a bid for that work. . . .

The Agreement also specifies in Article 32.2.B, the time period for the exchange of information and meetings between the parties:

> This information will be furnished at least sixty (60) days prior to the scheduled Installation of the service. Within forty (40) days of being furnished such information, the Union may request a meeting to discuss specific contract(s). Within forty-five (45) days of being furnished such information, the parties will exchange the basic cost analyses in order to facilitate discussions. The parties will meet on or before the sixtieth (60th) day. <u>At no time will the subject highway contract(s) for which a meeting has been requested be awarded prior to the actual meeting.</u>
>
> (Emphasis added.)

The Postal Service acknowledges that it provided late notice -- after the HCR contracts had been renewed -- during the period covered by this grievance, but stresses that the parties subsequently engaged in the substantive procedures outlined in Article 32.2.B as referenced above. The parties held meetings, exchanged documents, and discussed the relative costs of HCR versus PVS. The parties disagree about whether those meetings truly afforded the Union the opportunity to make a competitive bid

for the contracted services or if they were merely perfunctory and meaningless since the contracts already had been awarded.

APWU POSITION

* * *

By way of background, the Union asserts that Article 32.2 procedures were generally followed until around 2008, but the Union considered the process to be unfair and regularly voiced its complaints to the Postal Service. As Union witnesses testified, the Union's major complaints, besides its confirmed belief that non-notifications were widespread, were that the cost comparisons being done by the Postal Service were incorrect and unfair, and that the Postal Service paid no attention to the Union's arguments on other factors the Postal Service had to give due consideration under Article 32.2. . . .

The 212 violations at issue here, the Union maintains, are part of a broader pattern of violations that began years earlier and continued after this dispute was filed in 2011. The remedies requested by the Union are based on those 212 violations, but the Postal Service has not complied with Article 32.2 in any case since 2010, which means there are many more than 212 cases at issue and there is a need for the remedies sought by the Union.

* * *

. . . The Union is seeking a remedy sufficiently effective to compensate for the 212 violations that occurred in the context of what it contends was the virtual abrogation of Article 32.2 by the Postal Service.

. . . The Postal Service [sic – Union] has tried to gain Postal Service compliance with Article 32.2 for years with no results. A direction that the Postal Service merely start complying with Article 32.2 in the future would be no remedy at all.

. . . The case here is not one of an isolated and inadvertent event. The Postal Service violated Article 32.2.B in a wholesale manner and did nothing to correct those violations. It renewed hundreds of HCR contracts without giving due consideration to the factors it must consider under Article 32.2 before it awards or renews a contract.

* * *

The Union insists the Postal Service misstated the issue in this case when it said it would like it to be: "[w]hat's the appropriate remedy for a procedural violation to Article 32.2.B when the Postal Service fails to timely notify the Union of HCR renewals." The actual issue, the Union insists, is about what remedy to apply for 212 documented and undenied violations that occurred in 2010, when the Postal Service had completely stopped providing timely notices and meetings under Article 32.2. . . .

* * *

POSTAL SERVICE POSITION

The Postal Service argues that the Unions [sic] demand for damages is unjustified and unsupported. The Postal Service acknowledges its procedural violations, but points out that those violations did not preclude the Union from actively engaging with management in the substance of the Article 32.2.B renewal process. There is neither legal nor factual support for an award that includes massive monetary back pay and a redistribution of work to the Union moving forward at greater cost to the Postal Service. The Postal Service insists that the Union should not be awarded a windfall or what would amount to punitive damages.

The Postal Service stresses that an arbitration remedy must find its essence in the agreement. . . The purpose of an arbitration remedy is to restore the status quo; that is, to place the parties in no better or worse position than they would have been in had there been no contract violation. . . .

* * *

The Postal Service argues that a cease and desist order is the only appropriate remedy for the notice violation in this case. . . .

* * *

FINDINGS

Article 32.2.B of the National Agreement provides that the requisite notice ("information") "will be" furnished to the Union at least sixty days prior to the scheduled installation of highway contract service. This includes HCR renewals. The Union has forty days in which to request a meeting to discuss a specific contract. The parties then are to exchange basic cost analyses

within forty-five days and meet on or before the sixtieth day since the notice. In no uncertain terms, Article 32.2.B states:

> At no time will the subject highway contract(s) for which a meeting has been requested be awarded prior to the actual meeting.

Timely notice is a necessary prerequisite for the Union to exercise its right to request a meeting before which the Postal Service is proscribed from awarding a highway contract.

The Postal Service in this case has not disputed that during 2010 and in subsequent years it engaged in wholesale and repeated violations of its obligation not to award an HCR contract before: providing notice, giving the Union the opportunity to request a meeting, and, if a meeting is requested, exchanging basic cost analyses and meeting with the Union to discuss the subject contract. The Postal Service has not offered an explanation for why it failed to comply with Article 32.2.B or to take effective corrective action even after the filing of this National grievance in 2011. Consistent with my March 16, 2015 Interim Award in this case, the Union has presented an interpretive issue for purposes of Article 15. A remedy for this extraordinary notice violation -- involving notice to be given to the Union at the National level -- is not one that effectively can be dealt with at the local level or through separate grievances tied to individual HCRs.

The Postal Service claims that the Union nonetheless got the full benefit of its bargain with the Postal Service when notices ultimately were provided after the HCR contracts had been awarded. According to the Postal Service, the Union then had the opportunity -- which it evidently availed itself of -- to request a meeting and the parties then proceeded in accordance with the procedures in Article 32.2.B. But discussion and review and consideration by the Postal Service of the factors in Article 32.2.A after a service contract has been let cannot be presumed to be equivalent to the procedure the National Agreement provides for and, critically, is not what the parties bargained for.

A cease and desist order, as the Postal Service proposes, of course, is warranted. It is proper and necessary, but is not by itself sufficient given the nature of the Postal Service's violation, including that it was systemic, knowing and not shown to have resulted from circumstances beyond management's control. At the same time, any additional remedy must be related to and proportional to the harm -- as best it can be determined -- to the Union and the bargaining unit.

This case is about the Postal Service's failure to timely comply with the notice and discussion provisions and the "At no time..." provision in Article 32.2.B. This case does not encompass issues relating to the Union's myriad complaints regarding the substance of the cost analyses and the discussions between the parties and their impact on the Postal Service's application of the "due consideration" provision in Article 32.2.A. Much of the Union's evidence, ostensibly presented as background, focused on those other issues. . . .

* * *

… [I]n the present case . . . there is little likelihood, as a general matter, that even if the Postal Service had provided timely notice and otherwise followed the procedure mandated by Article 32.2.B the Postal Service would have retrieved the HCR work at issue for performance by the bargaining unit rather than renewing the contracts. [Footnote in original: The result in some individual cases may be different, but those cases are not before me.] The Union's own evidence supports this conclusion. Other changes -- not at issue in this case -- would have been required for the Union to make any substantial inroads. Moreover, in this case, the Postal Service was not in violation of an existing cease and desist order.

In sum, I am not persuaded that granting the Union's requested monetary remedy is appropriate or justified in this case. As previously indicated, however, the Postal Service's widespread and repeated disregard for the requirement of timely notice and continuing violation of the "At no time..." provision in Article 32.2.B requires more than a cease and desist order. The Postal Service had ample opportunity to correct its ways and has offered no compelling explanation for not having done so in response to this 2011 grievance.

Accordingly, in addition to a cease and desist order directing the Postal Service to comply with the notice and procedural provisions of Article 32.2.B before it awards an HCR contract, I will grant the following remedy:

(1) Within six months of the date of this Award (unless otherwise agreed), the Postal Service shall convert the 110 (or whatever number there continue to be) disputed routes remaining in service (out of the original 212 cited violations) to PVS service for a four-year period.

(2) By agreement, the parties may substitute other route(s) to be converted to PVS service pursuant to this order based on particular circumstances.

Part of the context I have taken into account in providing this particular remedy is that the Postal Service's violation of Article 32.2 is not limited to the 212 cited violations that occurred in 2010, but has been widespread and repeated. Together with the cease and desist order, this is intended to remedy the harm to the Union and the bargaining unit arising from these violations and to impress upon the Postal Service its obligation to fully comply with the procedures it agreed to with the Union.

AWARD

The Postal Service violated the National Agreement by notifying the Union of HCR contracts after they have been let. The Postal Service is ordered to cease and desist such violations and to comply with the notice and procedural provisions of Article 32.2.B before it awards a Highway Contract Renewal (HCR) contract.

The Postal Service also is ordered to comply with the following remedy:

(1) Within six months of the date of this Award (unless otherwise agreed), the Postal Service shall convert the 110 (or whatever number there continue to be) disputed routes remaining in service (out of the original 212 cited violations) to PVS service for a four-year period.

(2) By agreement, the parties may substitute other route(s) to be converted to PVS service pursuant to this order based on particular circumstances.

(3) I retain jurisdiction to resolve any matters relating to implementation of this remedy.

ISSUE

The parties' respective statements of the issue now to be decided here differ somewhat in wording, but not in substance. The APWU states the issue as:

> Whether the remedy award in Case No. Q06C-4Q-C 11182451 (Das, August 18, 2016), which resulted from a dispute filed in 2011 complaining of 212 specified violations of the notice requirements of Article 32.2.B, also remedied all other grievances alleging violations of the notice requirements of Article 32.2.B which were pending at the time of that Award.

The Postal Service expresses the issue as:

> Whether the 2016 award in this case remedied all grievances alleging violations of the notice requirements of Article 32.2.B which were pending at the time of the award.

APWU POSITION

The Union insists that the August 18, 2016 Merits Award in this case was a decision about an appropriate remedy for 212 Article 32.2.B violations. The Postal Service did not deny that it had violated the notice provisions of Article 32.2.B in the 212 instances cited by the APWU. The Postal Service also did not deny that by 2010, its violations of the notice requirements of Article 32.2.B were widespread.

The remedy provided in the Merits Award, the Union asserts, is specifically directed to the 212 violations at issue in this case. It is a comprehensive remedy for the 110 routes, out of the original 212, which remained in existence at the time of the 2016 Award. The fact that the Postal Service had stopped complying with the advance notice requirements of Article 32.2.B was a significant factor in the Arbitrator's decision to require that the remaining 110 HCR contracts be canceled and converted to PVS service. The remedy was intended "to impress upon the Postal Service its obligation to fully comply with the procedures it agreed to with the Union."

After the August 18, 2016 Merits Award was issued, the Union states, the parties released cases which had been held in abeyance pending the decision in this case and began to process them in accordance with Article 15. In 2019, however, the Postal Service changed

its position and stated that the Merits Award had remedied all cases pending at the time it was issued. The Union points out that the Postal Service's revised position, if effectuated, would terminate pending local grievances and Step 4 disputes concerning Article 32.2.B notice violations. The Union disputed the Postal Service's contention that the remedy provided in this case also remedied other cases that had not been before the arbitrator, and invoked the Arbitrator's retained jurisdiction. The APWU urges that the Union needs to have this issue resolved authoritatively in this case.

The Union asserts that the Merits Award on its face applies to "...the 110 (or whatever number there continue to be) disputed routes remaining in service (out of the original 212 cited violations)..." It would be hard to specify more clearly, the Union insists, that the Merits Award provides a remedy for the 212 violations in this case. Both parties understood in 2016 that the other pending Article 32.2.B cases were separate from this case and that they had not been remedied by the Merits Award in this case. Moreover, the evidence of violations in this case was limited, at the Postal Service's insistence and by an Arbitrator's evidentiary order, to evidence concerning the 212 routes at issue.

In addition to the necessary cease and desist order, the APWU sought a remedy for each of the 212 violations at issue. The Postal Service opposed the requested remedy by arguing that the Union was required to seek individual remedies based on local circumstances, and that the Union was seeking to bring a national-level class action case by combining separate violations into one case, contrary to the St. Petersburg Award. The Arbitrator disagreed, holding in his Interim Award:

> ... if the evidence establishes what the Union alleges in this case -- a wholesale abrogation or disregard of the notice requirements in Article 32.2.B by the Postal Service at the National level -- then the issue of whether the Postal Service's actions or inactions warrant the sort of comprehensive and extraordinary remedy the Union seeks -- which can only be obtained in National arbitration -- could constitute an interpretive issue for purposes of Article 15.

The "comprehensive and extraordinary" remedy sought by the APWU was that the 212 HCR Article 32.2.B notice violations be remedied in one case. The Union points out that the remedy

in this case flowed directly from those 212 notice violations. Because HCR contractors perform work that PVS drivers also perform, and would perform but for the presence of the contractors, Article 32.2. protects PVS against subcontracting.

The Union stresses that it was not seeking a nationwide order that all HCR contracts renewed without timely notice to the Union must be canceled and the work converted to PVS service. Such an order would have required the Arbitrator to reconsider and overturn the St. Petersburg Award. The Union maintains that the Postal Service also misconstrues another teaching of the St. Petersburg Award. In St. Petersburg, the Arbitrator explained that if the Article 32.2.B contract violation at issue occurred in the context of "a more widespread failure to provide notice," the widespread failure may be relevant to the appropriate remedy to be awarded in that case. The Postal Service is now arguing that where widespread violations have occurred, the Arbitrator is thereby empowered to remedy all those other violations which have not been individually proven. That argument is foreclosed by the St. Petersburg Award, which held that the remedy must address the case in question. In this case, consistent with the holdings of St. Petersburg, the Arbitrator considered the fact that Postal Service had stopped complying with Article 32.2.B as a factor in awarding a remedy for the 212 violations at issue.

The Union disputes the notion that proof of widespread violations changed the nature of this dispute from one involving 212 violations to one involving all violations nationwide. This case is an amalgamation of 212 notice violations which occurred in 2010. In the Interim Award in this case, the Arbitrator characterized the remedy sought by the APWU -- a remedy for 212 separate violations of the National Agreement -- as a "comprehensive and extraordinary" remedy. It was that remedy which APWU contends it received in this case.

At the time of the 212 violations in 2010, the Union further asserts, the APWU was not likely, as the Arbitrator concluded, to obtain work by following the Article 32.2.B process. However, under the 2010 National Agreement that took effect on May 23, 2011, after this grievance was filed, there was an excellent chance that PVS service would compete successfully with HCR contractors. After the 2010 National Agreement took effect, the likelihood that the Union could prevent the renewal of HCR contracts was much improved, as

shown by the uncontroverted testimony of economist Kathryn Kobe, a Union witness at the Merits hearing. Furthermore, under the 2010 National Agreement, the Union had an alternative to the rigid and unfair provisions of the Postal Service's Form 5505 process. The 2010 National Agreement included a Memorandum of Understanding regarding "Contracting or Insourcing of Contracted Service" which states:

> It is understood that if the service can be performed at a cost equal to or less than that of contract service, when a fair comparison is made of all reasonable costs, the work will be performed in-house.

This MOU, which applies to HCR contracting, together with the other provisions of the Motor Vehicle Craft Jobs MOU in the 2010 National Agreement, the Union maintains, substantially leveled the playing field for consideration of HCR contract renewals.

POSTAL SERVICE POSITION

The Postal Service contends that the plain language of the 2016 Award fully and clearly addresses the scope of the remedy. The Arbitrator explicitly states that "[p]art of the context" in providing the very significant remedy of conversion of 110 HCR routes was that he had "taken into account" the Postal Service's violations beyond the 212 cited instances. The Arbitrator explains the intent of the remedial award by stating that such remedy "is intended to remedy the harm to the Union and the bargaining unit arising from these violations...." There simply is no substantive or grammatical way to understand "these violations" other than as a reference to include instances "not limited to the 212 cited violations." While the Union would limit the scope of the remedy to the 212 specifically listed cases, the text of the Award explicitly states otherwise.

The Postal Service also maintains that the 2015 Interim Award makes it abundantly clear that this case was broader than just the 212 cited violations. The holding of the Interim Award is that the grievance raised a national interpretive issue on which the Union could proceed. The Arbitrator determined that in light of the Union's allegations of "a wholesale abrogation or disregard of the notice requirements in Article 32.2 by the Postal Service at the

National level – then the issue of whether the Postal Service's actions or inactions warrant the sort of comprehensive and extraordinary remedy the Union seeks -- could constitute an interpretive issue for purposes of Article 15." Notably, the issue as identified by the Arbitrator was neither limited, nor defined, nor identified with any specific reference to the 212 cited violations. Indeed, the Arbitrator expressly rejected the notion that simply consolidating a collection of separate violations would raise a national interpretive issue. A national issue was determined to exist in this case precisely because the allegations transcended any specific number of cited violations.

Thus, the Postal Service argues, the national issue going forward was what shall be the remedy for the Postal Service's "wholesale abrogation or disregard of the notice requirements of Article 32.2." The scope of the remedy clearly awarded in the Arbitrator's 2016 Award is fully consistent with the scope of the issue accepted for national arbitration.

The Postal Service rejects the Union's assertion that the Arbitrator was without jurisdiction to address violations beyond the 212 cited instances. In the Interim Award the Arbitrator accepted a broad, national issue for arbitration because such an issue was genuinely raised in the Union's grievance. This case was always about the national practice of violations, not about the individual circumstances related to the lack of notices in the 212 examples. In the Interim Award, the Arbitrator determines that the proper remedy for a national practice of violations is the precise issue over which he has jurisdiction.

The Postal Service stresses that the Union explicitly asked for the remedy in this case to include a process for additional remedies for other alleged violations beyond the 212 cited violations. In its requested remedy, the Union asked the Arbitrator to direct "that the parties be instructed to meet and seek to reach an agreement on a remedy for all like or related violations of Article 32.2 that have occurred since the filing of the dispute in this case and that are the subject of a pending dispute between the parties." Plainly, the Arbitrator had the authority not only to decline the Union's requested remedy regarding the cases outside the 212 cited violations, but also to grant the award of the 110 conversions based on consideration of both the cited violations and the ones outside the 212. The scope of the Arbitrator's remedy, as

reflected in the plain language of the Award, is fully consistent with the scope of the Union's grievance, the scope of the case presented by the Union, and the scope of the issue that the Arbitrator determined was before him.

The Postal Service points to an oft-cited statement on the authority of arbitrators to fashion appropriate remedies, in which Arbitrator Richard Mittenthal explained:

> Arbitrators have an extremely large measure of discretion in determining how a contract violation should be remedied. They can and should consider the nature of the wrong done, the damage (or lack thereof) to the employees, the practical impact of the remedy sought, the nature of the bargaining relationship, and other such matters.

USPS and APWU, Case Nos. H1C-NA-C 97 et al. (1989). The Postal Service asserts that while the goal of any remedial award is to place the parties in the position they would have been in but for the contractual violation, that place is not always easy, or possible, to determine.

This case, the Postal Service maintains, raised one of those difficult determinations on how to fashion a remedy that gave fair and balanced consideration to the factors cited by Arbitrator Mittenthal. Among the considerations that explicitly were taken into account is the reality that the notice violations did not likely result in the bargaining unit actually losing any work. Moreover, there is no basis for alleging that any existing employees lost money. On the other side of the ledger, the contractual violations were clear and pervasive and denied the Union a contractual right important in the parties' relationship. The Arbitrator determined to grant the Union as the primary remedy the conversion of the 110 routes, but he did so to remedy the harm to the Union from the Postal Service's wholesale and systemic national practice of violations -- including for both the 212 cited violations, as well as for the pending violations outside the 212. This decision, the Postal Service insists, reflected a clear resolution of the remedy taking into account various considerations that were well within the Arbitrator's remedial authority. The Arbitrator's remedial award was a strong, meaningful, and comprehensive response to the Postal Service's pattern and practice of notice violations.

Nothing in the award, the Postal Service asserts, foreshadows additional proceedings with additional remedies for the Postal Service's past contractual violations.

FINDINGS

At issue in this supplemental proceeding is the scope of my August 18, 2016 Merits Award. Key Findings in that Award included the following:

> A remedy for this extraordinary notice violation --- involving notice to be given to the Union at the National level --- is not one that effectively can be dealt with at the local level or through separate grievances tied to individual HCRs.
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> * * *
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> A cease and desist order, as the Postal Service proposes, of course, is warranted. It is proper and necessary, but is not by itself sufficient given the nature of the Postal Service's violation, including that it was systemic, knowing and not shown to have resulted from circumstances beyond management's control. At the same time, any additional remedy must be related to and proportional to the harm -- as best it can be determined -- to the Union and the bargaining unit.

Determining the appropriate remedy in these circumstances has been particularly challenging: " --ay, there's the rub." (Wm. Shakespeare, Hamlet, Act III, Scene 1.)

The dispute submitted by the Union at Step 4 in 2011 cited 212 specific violations of the notice provision in Article 32.2. That was the dispute appealed to National Arbitration, which I ruled on in my 2016 Merits Award, after issuing an Interim Award in 2015 on arbitrability/jurisdiction. The gravamen of that dispute, however, reached far beyond those 212 specific violations. To resolve the dispute presented in National Arbitration, those violations could not be considered in isolation. To have done so would have missed the heart and substance of the Union's complaint regarding the Postal Service's wholesale abrogation or disregard of the notice requirements in Article 32.2 for which the Union sought a comprehensive and extraordinary remedy.

The remedy I granted, albeit in the context of the 212 violations presented to me, was addressed to the National interpretative issue which constituted the basis for my jurisdiction as a National Arbitrator. As I pointed out (footnote omitted):

> ...[I]n the present case … there is little likelihood, as a general matter, that even if the Postal Service had provided timely notice and otherwise followed the procedure mandated by Article 32.2.B the Postal Service would have retrieved the HCR work at issue for performance by the bargaining unit rather than renewing the contracts. The Union's own evidence supports this conclusion.

Yet, I granted a remedy that ordered the Postal Service to "convert the 110 (or whatever number there continue to be) disputed routes remaining in service (out of the original 212 cited violations) to PVS service for a four-year period." I properly could, and did, order that remedy in response to the uncontested evidence that the Postal Service essentially had defaulted on a continuing basis in complying with its acknowledged mandatory obligation under its Collective Bargaining Agreement (CBA) with the APWU. As I stated:

> Part of the context I have taken into account in providing this particular remedy is that the Postal Service's violation of Article 32.2 is not limited to the 212 cited violations that occurred in 2010, but has been widespread and repeated. Together with the cease and desist order, this is intended to remedy the harm to the Union and the bargaining unit arising from these violations and to impress upon the Postal Service its obligation to fully comply with the procedures it agreed to with the Union.

Finding a "perfect" remedy was elusive, but the remedy I granted, I concluded, was the fairest, most reasonable and effective remedy I could grant consistent with the CBA and the circumstances presented to me. The Postal Service's widespread abrogation of its notice obligation at the National level -- not just in the 212 cited violations before me – was reflected in the remedy I granted. Consistent with the general principles set forth in Articles 32.1 and 32.2.A and prior National Arbitration decisions on remedy, if I had been tasked with deciding on a remedy to be directly applied in all cases where the Postal Service had not given the required

notice during this period, I would not have ordered the Postal Service to convert all the routes which had been awarded to HCR contractors.

A significant factor in both my Interim Award and Merits Award was that regional Arbitrators ruling on individual lack of notice cases were not in a position to effectively address the gravamen of the Union's complaint in this case. Their role was and remains to apply the St. Petersburg principles to their particular case(s) and to grant a remedy, where called for, based on the individual circumstances of that case, not to remedy the Postal Service's abrogation of its obligation to provide notice at the National level to the Union. If, as the APWU argues, the changes in the Article 32.2 process included in the 2010 National Agreement that took effect in May 2011, after this dispute was filed, have significantly improved the chances that PVS should be chosen over an HCR contractor, that is something that can be addressed on a case-by-case basis under St. Petersburg.

SUPPLEMENTAL AWARD

(1) The above Findings, which are incorporated in this Award, highlight and elaborate the unique factual and contractual basis on which the 2016 Merits Award in this case was decided and the remedy therein granted.

(2) When I issued my 2016 Merits Award, my jurisdiction to decide and remedy particular grievances was limited to the Step 4 dispute presented to me which related to 212 specified violations of Article 32.2.B.

(3) The National interpretative issue presented to me and decided in the 2016 Merits Award, however, intrinsically was broader than and not confined to those 212 specified violations of Article 32.2.B. This was reflected in the remedy granted in the Merits Award, as set forth in the above Findings.

Shyam Das, Arbitrator