



National Association of Letter Carriers

July 2, 2015

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To: NBA Offices

Subject: Heat Safety and M#1860

In the last few weeks the NALC has been asked a number of questions relating to M#01860 and its application outside of the Independence, MO Post Office. The following background information is relevant to addressing the questions as posed. Further, at the conclusion of this document you will find our recommendations as to how to handle any issue you confront where management is not protecting our letter carriers from dangers of extreme heat.

Death of John Watzlawick

On July 24, 2012, John Watzlawick, a letter carrier employed at the Independence, MO Post Office died on duty. The Medical Examiner determined that the death was caused by Hyperthermia, noting that his body temperature was 108° at the time he was admitted into the hospital.

OSHA Issues a Citation

On December 12, 2012, the Occupational Safety and Health Administration (OSHA) issued Citation# 538158 to the USPS labeled as Willful, finding that the USPS violated the "General Duty Clause" of the Occupational Safety and Health Act of 1970 (OSH Act), which requires an employer to furnish employment and a place of employment which are free from recognized hazards that cause or are likely to cause death or serious physical harm to employees.

The Citation listed hazard abatement recommendations and issued a \$70,000.00 proposed penalty for the employer's failure to protect John Watzlawick and others from the known hazard of heat.

USPS Contests the Citation

By letter dated January 3, 2015, the USPS contested Citation# 538158. The process of contesting an OSHA citation lead to a hearing before the Occupational Safety and Health Review Commission (OSHRC). The NALC, requested and was granted party status to the hearing when scheduled.

OSHRC Hearing

OSHA was represented by Charles W. Gordon, Jr., Esq., U.S. Department of Labor, Office of the Solicitor. The hearing was held on February 25, 26 and 27, 2014. OSHA presented a number of letter carriers who testified to make sure that Judge Ball of the OSHRC heard the truth about the real post office we work in and not the fantasy post office, a picture that management attempted to paint. OSHA also presented two expert witnesses (Allen J. Parmet, MD, MPH; and Thomas E. Bernard, Ph.D in Occupational Health). The USPS presented no expert witnesses on heat safety.

OSHRC Issues Decision

On September 10, 2014, Judge Ball issued a decision upholding the Willful Citation and adopting a number of the recommendations in the original citation.

Judge Ball's decision includes the following observations:

- 1) The employer's district safety manager does not have authority over other managers and supervisors; the employer's heat safety program was at best informal; in spite of expectations of the safety department there was no meaningful system to follow up on training to make sure that it was properly shared with our letter carriers; and that there is very little evidence to indicate what was discussed and virtually no evidence of a robust training regimen.
- 2) The court was convinced that management communicated a "heat does not matter attitude" in spite of the number of carriers that took ill due to the heat, and that once employees started to use sick leave it was taken by management as a threat of a work slowdown. The court also found that the threat of discipline was real and influenced employee behavior in such a way as to place them in a situation where they might disregard symptoms of heat related illness, explaining that some letter carriers were told to take rest breaks but they understood that these breaks had to fit within the existing

allowance for breaks.

- 3) Dr. Parmet testified as to the effects of such high heat on the body; specifically, he mentioned that the blood thickens, making it more difficult for the body to process oxygen, and that at a certain temperature the proteins in the blood can be permanently altered like an egg in a frying pan; and that both doctors testified that prolonged exposure can lead to heat exhaustion, heat stroke, and even death.
- 4) [The USPS] can rely on National Weather Service reports and advisories, which it already receives to determine when the heat stress management protocol should be implemented.
- 5) While there are many locations at which a letter carrier can take their breaks, there did not appear to be a coordinated effort by management to contact local businesses about the use of their facilities instead of passing this responsibility on to the employee; and that this ad hoc system is not sufficient for purposes of a heat stress management program – it is the employer’s responsibility to ensure that the workplace wherever it may be, is free of recognized hazards; and that an employer cannot shift this responsibility to its employees by relying on them to, in effect, determine whether the conditions under which they work are unsafe.
- 6) The obstacle in this case is not feasibility; rather, it is the apparent unwillingness of management to accept that heat impacts performance, notwithstanding the information and literature available to them and that management failed to utilize available safety information.
- 7) That management failed to respond to known instances of heat related illness and that managements attempts to mitigate the importance of its knowledge of prior incidents are unpersuasive.
- 8) The court finds that [the USPS] exhibited a conscious disregard of, and plain indifference to, employee safety.
- 9) [The USPS] should not be entitled to any credit for good faith; the penalty of \$70,000.00 and the Willful Citation is upheld.

USPS Challenges the OSHRC decision

On October 10, 2014, the USPS petitioned the OSHRC for a “Discretionary Review”, explaining that it took exception to the finding that the employer’s behavior was willful. In support of the challenge the USPS offered the following:

“...It is always distasteful to balance the cost and practicality of protective measures against employee safety and health, but the Postal Service must consider such issues...and the Judge nowhere addressed the issue of economic feasibility and practicality of the abatement she endorsed.”

The USPS challenge also included the following claim:

“...The Judge did not address, however, that letter carrier break times are a term and condition of employment, and therefore a subject of mandatory collective bargaining that cannot be changed unilaterally...The Judge also gave no consideration to how allowing additional break times would affect the cost of delivering mail...”

By letter dated October 27, 2014, the OSHRC notified the USPS that the decision of the Judge was not directed for review and advised that the above referenced decision became final effective October 24, 2014.

On December 22, 2014, the USPS appealed this issue to the Eight Circuit Court of Appeals. A briefing schedule was set with a deadline of May 15, 2015.

M#01860 - May 15, 2015

Beginning in February of 2015 and concluding just short of the deadline, the USPS and the NALC bargained over a solution of how to meet the needs of both parties.

We encourage a very close review of the agreement as bargained beginning with the following:

“...While this agreement applies solely to the Independence, Missouri, Post Office, including its stations and branches, **the parties recognize that heat abatement is an essential element of on-the-job safety for city letter carriers in all locations where city letter**

carriers are exposed to excessive heat..."

This statement is in fact a recognition that specific actions have been bargained solely for Independence, Missouri, while at the same time recognizing the dangers of heat and a requirement to have a heat abatement program in all locations where city carriers are exposed to excessive heat.

The Chart found in item #2 of the MOU is a Heat Index which factors the combined effect of temperature and humidity.

In item #4 of the MOU, we specify that when excessive heat "could" reasonably be expected, carriers are to be reminded, by their supervisor through a safety message, to drink approximately eight ounces of water for every 20 minutes of work in excessive heat.

As a direct result of the bargaining of the MOU (M#01860), the USPS withdrew its appeal of the OSHRC decision issued by Judge Ball. That decision remains in full force and effect, and must be complied with if the USPS abandons our agreement in M#01860.

What this means is the decision of the OSHRC may be submitted in support of a new heat safety complaint with OSHA, to show that the USPS has already been issued a "Willful" citation which has not been overturned, and that this Willful citation as upheld by Judge Ball of the OSHRC recognizes most if not all of the Heat Safety Training Material issued by OSHA and the National Institute for Occupational Safety and Health (NIOSH).

2015 Beat the Heat, Stay Cool

On May 8, 2015, the USPS issued notice to the NALC of the 2015 heat safety campaign. The timing of this notification and the content of the messaging is not a mere coincidence.

The 2015 Heat Safety Poster makes it clear that carriers are encouraged to: Rest (take a break), Hydrate (water) and get out of the Sun (shade) and to know the signs of heat. The mandatory Safety Talk, which was attached to the Poster and the letter from headquarters, should have been given by now.

If management has failed to conduct this stand up talk carriers should bring it to the attention of their managers and if they do not respond, shop stewards, branch

officers and if necessary the national business agent should be contacted.

What if a carrier runs into problems?

First, encourage the carrier to speak with their shop steward or their local union officers to advise them that there are problems with management compliance with a proper heat safety campaign.

If the heat is getting to a carrier and they feel the need to take an additional break, they should call their supervisor and inform him/her that they are taking an additional break to recover from the heat. Carriers should take this break in the shade. When done, carriers should contact their supervisor to advise that they are resuming their duties.

If a supervisor does not want to comply with the heat safety program, carriers should contact their shop stewards so it can be determined if a grievance or complaint with OSHA should be filed.

We encourage carriers to drink the recommended amount of water to maintain their hydration level. If this in turn causes them to take an additional pit stop or two then they should inform their managers that they will be needing additional time due to the anticipated heat of the day.

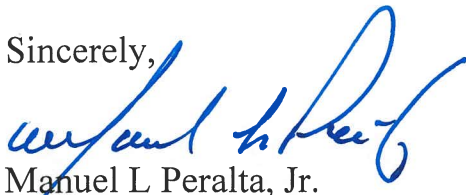
If they push back, carriers should contact their shop stewards so it can be determined if a grievance or complaint with OSHA should be filed.

If carriers feel that the heat is getting to them reach out before its too late.

Carriers should not let management pressure or intimidate them into sacrificing their safety.

If you have any questions on this matter, please contact me.

Sincerely,



Manuel L Peralta, Jr.

Director, Safety and Health

cc: Heat Safety Files