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**In the Matter of the National Arbitration Between**

UNITED STATES POSTAL SERVICE	)	
	)	
and	)	
	)	
NATIONAL ASSOCIATION OF LETTER	)	
CARRIERS, AFL-CIO	)	Case No. 4B 19N-4B-E 23120456
	)	Non-Payment of Wages
NATIONAL POSTAL MAIL HANDLERS	)	
UNION, AFL-CIO, INTERVENOR	)	
	)	
AMERICAN POSTAL WORKERS UNION,	)	
INTERVENOR	)	

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**Before:** Dennis R. Nolan, Arbitrator

**Appearances:**

<b>For the USPS:</b>	Lauren Heiman and Vikrant Advani, Law Department, and Joy Augustin and Dionne Hughes, Labor Relations Specialists, United States Postal Service
<b>For the NALC:</b>	NALC: Peter D. DeChiara, Cohen, Weiss and Simon LLP, New York, New York
<b>For the NPMHU:</b>	Matthew Clash-Drexler, Bredhoff & Kaiser, P.L.L.C., Washington, DC
<b>For the APWU:</b>	Melinda K. Holmes and Adrianna Sellers, Murphy Anderson, PLLC, Washington, DC.

**Place of Hearing:** Washington, D.C.

**Date of Hearing:** January 23-24, 2024

**Date of Award:** September 25, 2024

**Relevant Contract Provision(s):** Article 5, 8, 9, 15, 28, and 34

**Contract Year:** 2016-2019

**Type of Grievance:**

Payment of Wages

**Award Summary:**

The Union failed to prove by a preponderance of the evidence that the Postal Service violated any specific provision of the National Agreement by failing to pay employees after unauthorized access to LiteBlue resulted in changes to direct deposit information.

*Dennis R. Nolan*

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Dennis R. Nolan, Arbitrator

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**In the Matter of the National Level Arbitration Between**

**UNITED STATES POSTAL SERVICE**

**And**

**NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO**

**And**

**4B 19N-4B-E 23120456  
Non-Payment of Wages**

**NATIONAL POSTAL MAIL HANDLERS UNION**

**And**

**AMERICAN POSTAL WORKERS UNION, AFL-CIO**

\*\*\*\*\*

**Before:** Dennis R. Nolan, Arbitrator

**Appearances:**

**For the Employer:** Lauren Heiman and Vikrant Advani, Law Department, and Joy Augustin and Dionne Hughes, Labor Relations Specialists, United States Postal Service.

**For the Unions:** NALC: Peter D. DeChiara, Cohen, Weiss and Simon LLP, New York, New York.

For Intervenor NPMHU: Matthew Clash-Drexler, Bredhoff & Kaiser, P.L.L.C., Washington, DC.

For Intervenor APWU: Melinda K. Holmes and Adrianna Sellers, Murphy Anderson, PLLC, Washington, DC.

## OPINION

### **I. Statement of the Case**

The NALC filed this grievance on June 2, 2023 to challenge the Postal Services refusal to reimburse employees who lost money to a scam when they tried to use the direct deposit system. The parties could not resolve the dispute in the grievance procedure; the relevant panels all deadlocked, so the Union demanded arbitration on July 12 of that year. The APWU and NPMHU filed their own grievances and intervened in the NALC grievance when it got to arbitration.. The arbitration hearing took place in Washington, DC on January 23-24, 2024. All parties appeared and had full opportunity to testify, to examine and cross-examine witnesses, and to present all pertinent evidence. All parties submitted post-hearing briefs.

### **II. Statement of the Facts**

The parties introduced a great deal of information about the circumstances of this grievance. With very few exceptions the parties did not disagree about the significant facts. Rather, each introduced some information not presented by the other and then emphasized the portions most favorable to its own positions. I will therefore briefly summarize the relevant facts.

Internet scams have existed as long as the internet itself. One such scam, in the fall of 2022, is the subject of this case.

The mechanics of the instant scam were simple. The employer allows employees to access their payment accounts using a dedicated Postal Service web site, called LiteBlue, with a specific uniform resource locator, or URL. Employees who type in the proper URL are then prompted to enter their login information consisting of their username and password. Once logged in to LiteBlue, employees can use a self-service system to enter or change banking information for direct deposit of their wages. Employees do not have to deal with finance or human resources agents in order to make those arrangements.

The problem is that wrongdoers, often referred to by the parties in this hearing as Bad Actors, can easily set up superficially similar websites with nearly identical URLs. Employees who find their way to the fake websites, particularly those who are not skeptical or computer savvy, are

similarly prompted to type in their usernames and passwords. When they do so, the Bad Actors behind the fake website capture that login information, use it to log into the real UPS website, and redirect the employees' pay to new bank accounts under the Bad Actors' control. When the employer makes the next payment, the money goes to the Bad Actors' accounts instead of the employees' legitimate bank accounts. The Bad Actors can drain the accounts within minutes, close the accounts, and disappear into the ethernet.

That is exactly what happened here. The Postal Service established a self-service direct deposit system and gave employees the correct URL for that system. Employees who use the correct Postal Service URL are safe. Employees, however, do not always keep the correct URL handy and may not receive or notice the warnings. They may instead use a search engine like Google when attempting to locate the correct site. The search engine may then list several possible sites, some of which may be fakes.

Scammers set up fake LiteBlue sites, and some employees were fooled by them. By the time of the 2022 incidents that prompted this grievance, the Postal Service had known about fake LiteBlue accounts for several years. It had even sent an internal warning about them to some people in 2017 but not to the workforce at large. In the next five years, there were some warnings posted or otherwise published, but not all employees received or noticed the warnings.

Despite its knowledge about fake websites, the Postal Service did not introduce stricter available security measures that might have prevented frauds from fake web sites. It did not post warnings on LiteBlue or alert employees making changes there to the risk of fraud. Most importantly, the use of Multi-Factor Identification (MFA) for logging in. MFA systems send the user a one-time code that must be entered on the web site before concluding any transaction. Because the scammers in these types of fraud do not have access to the employees' cell phones or computers, they cannot access the one-time codes and thus cannot redirect payments. MFA was common but not universal in 2022; it has since become normal for many types of financial transactions. In 2022, no law or contract provision required it to use MFA. The Postal Service did require MFA at least by 2019 for access to certain sensitive information but did not require it for LiteBlue transactions until 2023, well after this case arose.

Some letter carriers (and members of other postal unions and even managerial employees) thus lost money to the scammers. Some of those who discovered their losses sought reimbursement from the Postal Service. The Postal Service refused because the employees gave the scammers their correct login information, albeit unwittingly, and the employer simply followed the directions it received.

The Bad Actors have never been identified. The Postal Service assisted law enforcement and the scammed employees but have only been able to recover about half of the lost funds. Many employee victims remain out of pocket.

Both parties to this grievance correctly believe themselves victims. The Bad Actors should be responsible for the losses but because they are unidentifiable and unreachable, the true victims, employees and employer alike, have to fight each other over which will be stuck with the losses. The employees naturally claim that the Postal Service did not pay them their wages. The Postal Service just as naturally claims that it did.

### **III. The Issue**

The parties agreed to this statement of the issue:

Whether the Postal Service violated the National Agreement, including but not limited to Articles 5, 8, 9 and 34, by failing to pay employees after unauthorized access to LiteBlue resulted in changes to direct deposit information? If so, what shall be the remedy?

### **IV. Pertinent Contractual Provisions**

#### **ARTICLE 5**

#### **PROHIBITION OF UNILATERAL ACTION**

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8( d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

#### **ARTICLE 8**

## **HOURS OF WORK**

### **Section 4. Overtime Work**

A. Overtime pay is to be paid at the rate of one and one-half (1 ½) times the base hourly straight time rate. . . .

B. Overtime shall be paid to employees for work performed only after eight (8) hours on duty in any one service day or forty (40) hours in any one service week. Nothing in this Section shall be construed by the parties or any reviewing authority to deny the payment of overtime to employees for time worked outside of their regularly scheduled work week at the request of the Employer.

## **ARTICLE 9 SALARIES AND WAGES**

### **Section 1. Salary and Wage Schedules**

Employees with career appointments before January 12, 2013 shall be paid and earn step increases according to the rates and waiting periods outlined in Table One.

Employees appointed to career positions on or after January 12, 2013 shall be paid and earn step increases according to the rates and waiting periods outlined in Table Two.

## **ARTICLE 15 GRIEVANCE-ARBITRATION PROCEDURE**

### **Section 4. Arbitration**

#### **D. National Level Arbitration**

1. Only cases involving interpretive issues under this Agreement or supplements thereto of general application will be arbitrated at the National level.

## **ARTICLE 28 EMPLOYER CLAIMS**

### **Section 3. Damage to USPS Property and Vehicles**

An employee shall be financially liable for any loss or damage to property of the Employer including leased property and vehicles only when the loss or damage was the result of the willful or deliberate misconduct of such employee.

## **ARTICLE 34 WORK AND/OR TIME STANDARDS**

A. The principle of a fair day's work for a fair day's pay is recognized by all parties to this Agreement.

## **V. The Unions' Positions**

1. **NALC.** The NALC begins by asserting the arbitrability of this case because the Postal Service's opening statement asserted that the grievances were not arbitrable. The Union claims violations of Article 5, 8, 9, and 34 requiring the employer to pay wages earned. The Postal Service also argued that the case should not be heard at the national level for lack of an interpretive issue, but in fact the parties do have a dispute over the meaning of National Agreement provisions such as the term "paid" in several articles. Moreover, Article 5 requires the employer to abide by its obligations under federal law, including the Fair Labor Standards Act.

The NALC next argues that the Postal Service violated the Agreement by failing to pay its employees. The ordinary meaning of "paid" supports that position because it requires actual payment to the creditor.

The FLSA also supports the NALC's position because it requires payment to the employee or to a third party for the employee's benefit. As several court decisions have held, payment to a scammer's account does not qualify.

Weighing of comparative fault is not relevant for these reasons.. If it were relevant, USPS is more at fault because it failed to secure its website as noted in Part II.

2. **NPMHU.** The Mail Handlers emphasize two points. First, the NPMHU National Agreement also reserves national level arbitration for interpretive issues. In handling the NPMHU grievance in this matter, the Postal Service never argued that the grievance failed to present an interpretive issue and therefore did not challenge arbitrability. The jurisdictional provisions and grievances are substantively similar, so if one is arbitrable the other must also be.

Second, resolution of this grievance turns on a straightforward interpretation of the term "paid," not on an assessment of comparative fault. Even if comparative fault were relevant, the Postal Service bears greater responsibility than any individual employee. The Postal Service failed to act with standard security measures until after the criminal activity here. The Postal Service knew



of the risks of fraudulent activity long before mid-October 2022 but failed to act until the following year.

**3. APWU.** The Postal Workers note that the relevant contract provisions in the NALC and APWU Agreements are similar. Its witness, APWU Director of Industrial Relations, described the history of the Postal Service's online Human Resources functions. In the 1990s, payment required manual processes managed by bargaining unit clerks. After the employer switched to a computerized system, human participation was limited. The Postal Service was aware of fake LiteBlue sites as far back as November 2017. Resulting thefts cost APWU bargaining unit members over a million dollars. Some employees received reimbursements but not all were made whole. The losses destroyed the holiday seasons of some victims. Only after the thefts did the Postal Service introduce security features like MFA.

The APWU argues that the Postal Service must bear the loss in these cases. Fault is not an issue. The Agreement requires the employer to pay the employees. The Postal Service has urged employees to use its direct deposit system and protect employees who do so. It gets a significant business advantage through direct deposit. It had to be aware of the risks. Failing to protect employees in this situation will cause them to rethink using direct deposit.

## **VI. The Postal Service's Position**

The Postal Service recognizes its obligations to pay employees but argues that it has done so in compliance with the proper interpretation of the Agreement. It begins by asserting that it secured LiteBlue and PostalEASE against unauthorized access through a complicated security apparatus. The Bad Actors did not breach either system. They merely used information given to them through the fake LiteBlue websites. Nevertheless, the unions argue that the Postal Service's security infrastructure was insufficient. The real problem was that employees circumvented those security measures. The Postal Service cannot monitor employees' personal devices.

Moreover, the Postal Service educated employees by publishing cyber training and awareness campaigns, article posted on LiteBlue, "stand-up talks" by managers, public postal bulletins, and mailers sent to employees' addresses of record. One article, PS Ex. A9, specifically warned about

the need to access the legitimate LiteBlue website by typing in the correct URL in order to avoid fake sites.

The Postal Service makes four arguments. First, the employees lost money to cybercriminals but the unions seek to “shoehorn fault” onto the Postal Service. The unions failed to prove that the Postal Service violated any provision of the parties’ contracts. They allege violations of Articles 8, 9, and 34. Those provisions only obligate the employer to issue payment for hours work, which it did. They do not obligate the Postal Service to take further action to make sure the employees actually *receive* the money.

Second, the unions allege a violation of Article 5 which incorporates obligations under the Fair Labor Standards Act (FLSA). The FLSA, like the other cited contractual provisions, does not require the Postal Service to ensure actual receipt. It simply requires payment within the meaning of the statute, which was done. The Postal Service’s construction of “pay” is consistent with the FLSA.

Third, at the arbitration hearing the unions raised for the first time an argument under Article 28 which deals with “*Employer* claims.” That allows the Postal Service to recoup damage cause by *employee* negligence. That is obviously inapposite.

Finally, the unions argue that Postal Service policy in Handbook AS805 required that the Postal Service use Multi-Factor Authentication. By its own terms, that policy did not impose such an obligation. More importantly, no contract provision imposes a duty to deploy any particular security measure. Any argument that the Postal Service should have instituted additional safeguards is therefore relevant to the unions’ claim of a contract violation.

## **VII. Discussion**

The sole issue in this case, to which all parties agreed, is whether the Postal Service “violated the National Agreement” by failing to pay employees who lost money to criminals who gained access to their direct deposit information on LiteBlue. That excludes consideration of other authorities such as statutes, except to the extent the National Agreement incorporates those authorities. The agreed issue also excludes arguments about possible “should-haves” — things that in retrospect would have deterred fraud but were not *required* safety measures in the fall of 2022.

Hindsight is always 20-20; by definition we cannot rely on it to conclude that parties should have had 20-20 foresight. Experience should always guide future actions; it cannot guide past actions.

As in all other contract cases, the Union has the burden of proof. In this case, that means the Union must prove that management violated some specific provision of the National Agreement. The NALC claims that management violated Articles 5, 8, 9, 15, 28, and 34. (The intervening unions claim violations of comparable provisions in their own agreements with the Postal Service.) I will address each of those provisions in turn.

**Article 5.** Article 5 prohibits unilateral employer actions “which violate the terms of this Agreement” or are “otherwise inconsistent with its obligations under law.” The former phrase requires proof that the employer violated some other provision of the Agreement; it applies only if the Union proves a violation of some other provision and thus will depend on later discussions. Article 5 thus adds nothing itself. The latter phrase requires identification of some independent legal obligation. The only such law cited by the Union is the Fair Labor Standards Act. The problem with that reference is that the FLSA is just as ambiguous as the National Agreement. Like the Agreement, it does not require adoption of any specific safety measure or say explicitly that employers are responsible for guaranteeing actual receipt of money paid by direct deposit.

**Article 8.** This article contains the employer’s obligation to pay for overtime work. That leaves open the critical question of what “pay” means in the context of the National Agreement. That question will be addressed below.

**Article 9.** Article 9 contains the employer’s obligation to pay wages in accordance with the agreed salary and wage schedules. Whether the Postal Service violated that provision depends on the meaning of “pay,” which will be addressed below.

**Article 15.** The Union anticipated that the Postal Service would challenge the arbitrability of this grievance. In fact, the Postal Service’s brief did not raise an arbitrability objection. The case is therefore arbitrable.

**Article 28, Section 3.** The Union belatedly raised Article 28 as an issue at the arbitration hearing. On its face, Article 28 is irrelevant because it deals only with employer claims against employees for negligence. No such claim is at issue here. Instead, the Union seeks to create an

analogy: if the Agreement authorizes the employer to seek compensation from employees for damages caused by their negligence, then the employees can likewise seek compensation for harm caused by employer negligence. That is not how collective bargaining agreements work. Experienced negotiators such as those who have negotiated every Postal Service collective bargaining agreement know how to impose obligations. They do it with express language, such as that in Article 28, Section 3. They do not impose obligations through silence and then later analogizing to something they *did* negotiate.

I find that Article 28, Section 3 has no bearing here.

**Article 34.A.** Section A merely states the truism that the parties agree on the principle of a fair day's work for a fair day's pay. It sheds no light on the dispute over who bears the loss when a third party intercepts money earned by an employee.

The sole remaining question is the one underlying several of these contractual arguments: what do the parties mean by the employer's obligation to "pay" employees? Is it enough to make a direct deposit in the bank account on record, or must the Postal Service take further steps to make sure the employees actually receive the direct deposit money? To put it differently, may the Postal Service simply act on the banking information it has or must it act as a guarantor for employees victimized by cyber criminals?

The term "pay" is ambiguous. It could fairly be applied either way. To prevail, however, the Union has to prove that its interpretation is superior to that of the Postal Service — that the Postal Service actually violated some provision of the Agreement. The Union failed to do so. The grievance must therefore be denied.

### **AWARD**

The Union failed to prove that the Postal Service violated any specific provision of the National Agreement by failing to pay employees after unauthorized access to LiteBlue resulted in changes to direct deposit information.

*Dennis R. Nolan*

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**Dennis R. Nolan, Arbitrator and Mediator**

**September 19, 2024**

**Date**