

No. 22-174

IN THE
Supreme Court of the United States

GERALD E. GROFF,
Petitioner,

v.

LOUIS DEJOY, POSTMASTER GENERAL,
UNITED STATES POSTAL SERVICE,
Respondent.

**On Writ of Certiorari
to the United States Court of Appeals
for the Third Circuit**

JOINT APPENDIX

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**PETITION FOR CERTIORARI FILED AUGUST 23, 2022
CERTIORARI GRANTED JANUARY 13, 2023**

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IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO. 19-CV-1879

GERALD E. GROFF,

Plaintiff,

v.

MEGAN J. BRENNAN, POSTMASTER GENERAL,
UNITED STATES POSTAL SERVICE,

Defendant.

DEFENDANT'S STATEMENT OF FACTS¹

1. The plaintiff has asserted two claims in this civil action, both on the basis of religion: (1) discrimination; and (2) failure to accommodate. (Groff Dep. 17:13-25, Dec. 20, 2019.)²

2. The plaintiff identifies as a Christian/Bible Believing Christian/Evangelical Christian. (Groff Dep. 26:17-27:7.) He believes that Sunday, the day on which he observes the Sabbath, is a day of rest where believers must generally abstain from work. (Groff

¹ The parties have agreed to a joint statement of material facts, attached as Exhibit "A." References to these facts are referred to in the accompanying motion papers by the abbreviation "JF." Notwithstanding the parties' inability to reach agreement, the defendant avers that other facts are similarly undisputed and material. Those facts are set forth herein and are referred to by the abbreviation "DF." Support for these facts is provided as part of the remaining exhibits to this statement of facts.

² Cited portions of the plaintiff's deposition are attached as Exhibit "B."

Dep. 27:16-20, 28:2-10.) He also believes that certain kinds of work is permissible on Sundays. (Groff Dep. 28:18-21.) For example, the plaintiff believes that “deeds of necessity” may be performed on Sundays. (Groff Dep. 28:20-29:5.) He admits that the Bible does not provide an exhaustive list of these deeds. (Groff Dep. 30:6-22.)

3. The plaintiff viewed working at the USPS to be doing the “Lord’s work.” (Groff Dep. 313: 13-16.) He believed it was the place that God put him to work. (Groff Dep. 318:24-319:1.)

4. The plaintiff did not spend the whole day in church on Sundays. (Groff Dep. 278:16-21.) The plaintiff watched NASCAR on Sundays. *Id.*

5. The plaintiff holds a bachelor’s of science in biology, which he received from Millersville University in 2001. (Groff Dep. 34:11-25.)

6. From August 2002 to August 2004, the plaintiff worked for the English Language Institute. (Groff Response to Interrog. No. 3³; USPS0035⁴; Groff Dep. 50:12-17, 53:18-54:7) The position was “volunteer,” for which he was paid a stipend for living expenses but no salary. (USPS0035; Groff Dep. 53:22-54:15.)

7. From August 2004 to March 2007, the plaintiff was unemployed. (Groff Response to Interrog. No. 3; USPS0035.)

³ Cited portions of the plaintiff’s responses to interrogatories are attached as Exhibit “C.”

⁴ Bates-numbered documents produced by the defendant (prefix “USPS”) are attached as Exhibit “D.”

8. From March 2007 to August 2007, the plaintiff worked for Sight & Sound ministries, a church. (Groff Response to Interrog. No. 3; USPS0034.)

9. From August 2007 to March 2008, the plaintiff worked for the DOVE School of Global Transformation, a religious organization doing missionary and outreach work. (Groff Response to Interrog. No. 3; USPS0034.) The position was “volunteer” and “unpaid.” (USPS0034; Groff Dep. 59:21-25.)

10. From June 2008 to October 2009, the plaintiff again worked for Sight & Sound ministries. (Groff Response to Interrog. No. 3; USPS0033; Groff Dep. 61:23-62:6.)

11. The plaintiff was laid off and was again unemployed from October 2009 until he was hired by the USPS. (Groff Response to Interrog. No. 3; USPS0033.)

12. The plaintiff first applied for employment with the United States Postal Service (the “USPS”) in 2010. (USPS00031-41.) He began as a Temporary Relief Carrier on November 20, 2010 in the Quarryville station. (USPS00026.) In this part-time, non-career position his job was to cover for the absence of full-time career mail carriers. (Groff Dep. 79:5-80:18.) He resigned effective October 19, 2011. (USPS00021.)

13. He applied and was re-hired as a Temporary Relief Carrier in the Quarryville Station on April 26, 2012. (USPS00020.) He subsequently passed an exam and became a Rural Carrier Associate (“RCA”) in the Paradise Station effective July 12, 2012. (USPS00018-19.)

14. One of the requirements for being an RCA is being flexible. (Groff Dep. 148:6-8.)

15. RCAs are responsible for the safe and efficient delivery and collection of the mail, working part-time to cover for regular carriers. (<https://about.usps.com/publications/pub181.pdf>.) Work hours vary depending on the office and route. *Id.* As flexible, relief carriers, all RCAs must be willing to work weekends and holidays. *Id.*

16. RCAs deliver mail on main roads and back roads. *Id.* They work in all weather and encounter snow, ice, rain, dust, and mud. *Id.* They can be out late at night, in the dark. *Id.* When delivering packages, RCAs sometimes have to leave their car and walk to a customer's door. *Id.*

17. RCAs are neither guaranteed specific hours or set schedules. (Hess Decl. ¶3.)⁵ They do not generally earn "leave" or time off. (USPS00271). They are scheduled on an as-needed basis. (Hess Decl. ¶3.)

18. For the last decade, the USPS's finances have been steadily worsening. (<https://money.cnn.com/2012/11/15/news/economy/postal-service-record-losses/index.html>.) In 2012, the USPS lost a record \$16 billion. *Id.*

19. As a result, in an effort to remain profitable, in 2013, the USPS signed a contract with Amazon.com ("Amazon") pursuant to which the USPS would deliver Amazon packages. (Groff Dep. 159:16-22, 166:5-15; <https://blogs.wsj.com/digits/2013/11/25/a-peek-at-amazons-contract-with-the-postal-service>.) The delivery of Amazon packages did not start simultaneously in all USPS stations. (Groff Dep. 160:18-161:9.)

⁵ Brian Hess's declaration is attached as Exhibit "E."

20. It was critically important to the USPS that Sunday Amazon delivery be successful. (Hess Decl. ¶4.)

21. On May 24, 2016, the union representing RCAs signed an agreement with USPS known as a Memorandum of Understanding (the “MOU”). (Groff Dep. 163:17-165:3.) (USPS00264-65.) As required by the MOU, beginning in 2016, all RCAs had to be available to work on Sundays. (USPS00264-65.)

22. The MOU governs how employees are assigned to delivery Amazon packages on Sundays and holidays. (USPS00264-65.)

23. The MOU requires the USPS to create two lists of part-time flexible carriers. The procedure is as follows:

- a. First, the union creates a list of all part-time flexible rural carriers, substitute carriers, RCAs, and rural carrier relief employees.
- b. Second, every employee is asked if he or she wants to work on Sundays and holidays.
- c. Third, two lists are created: one of employees who want to volunteer to work on Sundays and holidays; and one of employees who do not.

(USPS00264-65.)

24. On any given Sunday or holiday, management determines how many carriers are necessary given the expected mail volume. (USPS00264-65). Management then assigns carriers as follows:

- a. First management schedules assistant rural carriers (“ARCs”). If there are sufficient ARCs, no additional part-time flexible carriers are scheduled.

- b. If there are insufficient ARCs, management then schedules additional carriers from the volunteer list, on a rotating basis. If between the ARCs and volunteers there are sufficient carriers to cover the need, no additional part-time flexible carriers are scheduled.
- c. If there are insufficient carriers between the ARCs and volunteers, additional part-time flexible carriers are scheduled, on a rotating basis, from the non-volunteer list.

(USPS00264-65.)

25. Pursuant to the MOU, a part-time flexible carrier may only be bypassed in the rotation for two reasons:

- a. The part-time flexible carrier has approved leave or a non-scheduled day adjacent to the Sunday or holiday; or
- b. Scheduling the part-time flexible carrier to work on Sunday or holiday would result in the carrier exceeding 40 hours at the end of the work week.

In addition, RCAs covering the extended vacancy of full-time career carriers are only scheduled if all other part-time flexible carriers have been scheduled and more carriers are still needed. (USPS00264-65.)

26. The Quarryville station began delivering Amazon packages on Sunday in 2015. (Groff Dep. 161 169:4-5.) At the time, the plaintiff worked at this station. (USPS00008-10, USPS00012, USPS00014.)

27. The Quarryville station was relatively a large station with approximately 13-15 carriers and approximately 11 mail routes. (Groff Dep. 111:1-4; Hess Decl. ¶5.)

28. The plaintiff negotiated with his then-postmaster, Patricia Wright, to be exempt from working on Sundays. (Groff Dep. 108:4-21.)

29. In 2015, prior to the enactment of the MOU, exempting an RCA from Sunday delivery was within the discretion of the postmaster. (Hess Decl. ¶7.) The relatively large Quarryville station had other carriers available to deliver on Sundays. (Hess Decl. ¶5.)

30. In 2016, Postmaster Wright informed the plaintiff that she would no longer be able to exempt him from Sunday work. (Groff Response to Interrogatory No. 5 at 10.)

31. The plaintiff did not file any grievance or employment discrimination complaint. Instead he voluntarily transferred to the Holtwood station effective August 20, 2016. (Groff Response to Interrogatory No. 5 at 10; Groff Dep. 112:16-113:25; 104:23-105:7; 340:1-9.)

32. In comparison to the Quarryville station, the Holtwood station was a much smaller operation. (Groff Response to Interrogatory No 5 at 10; Groff Dep. 104:23-105:7.) It had only three full-time carriers and three relief carriers to cover and three mail routes. (Hess Decl. ¶6.) At times the Holtwood station was down an RCA. (Hess Decl. ¶6.)

33. After learning he would no longer be exempted from Sunday work in Quarryville, the plaintiff requested reassignment to the Holtwood station, which was not yet delivering Amazon packages on Sundays. (Groff Response to Interrogatory No. 5 at 10; Groff Dep. 161:2-9.)

34. The plaintiff was re-assigned to the Holtwood station as an RCA effective August 20, 2016. (USPS00007.)

35. At all times relevant, Brian Hess was the Postmaster of the Holtwood station. (Groff Dep. 142:24-143:4.)

36. At the time the plaintiff transferred, the Holtwood station was not delivering Amazon packages on Sundays. (Groff Response to Interrogatory No. 5 at 10; Hess Dep. 14:10-14, Dec. 16, 2019.)⁶ No one ever promised the plaintiff that the Holtwood station would continue to be so exempt or that he specifically would be exempt from delivering Sunday. (Groff Dep. 140:18-141:5.)

37. From the time he first transferred to the Holtwood station until March of 2017, the plaintiff got along well with Postmaster Hess and the other employees in that station. (Groff Dep. 156:8-17.) He was not disciplined during this time. (Groff Dep. 156:21-157:4.)

38. Postmaster Hess is a Christian who attends church on Sunday. (Hess Dep. 95:25-97:23.)

39. In March 2017, Holtwood station became part of Amazon Sunday delivery. (Groff Dep. 157:10-12, 201:7-10.)

40. The plaintiff discussed with Postmaster Hess that he was not going to work Sundays because of his faith. (Groff Dep. 202:23-203:1.) The plaintiff indicated his intent to resign rather than be assigned to work Sundays. (Groff Dep. 203:2-4.) Postmaster Hess respected the plaintiff's religious convictions and told him he was sorry to lose a good employee (Hess Dep. 158:19-23.)

⁶ Cited portions of Postmaster Hess's deposition are attached as Exhibit "F."

41. Sunday delivery was handled differently during “peak” and “non-peak” season. Peak season began in November and ended in early January. (Groff Dep. 176:2-5.) The remainder of the year was considered non-peak season. (Hess Dep. 35:25-36:6.) During non-peak season, smaller stations were affiliated with the Lancaster Annex as a hub. (Groff Dep. 172:25-173:6.) Management in the Lancaster Annex created a schedule, scheduling part-time flexible carriers from the affiliated offices. (Groff Dep. 173:3-12.) Scheduled carriers reported to the Lancaster Annex and delivered the mail from that location. (Groff Dep. 173:7-12, 174:17-22.) During peak season, each station scheduled its own carriers who reported to and delivered packages from that station. (Groff Dep. 175:23-176:17.)

42. The first Amazon schedule involving Holtwood carriers was for Sunday March 19, 2017. (USPS001520-21.) The plaintiff was scheduled for that Sunday. (Groff Dep. 202:2-3.)

43. In an attempt to accommodate the plaintiff’s religious belief, management suggested the following to the plaintiff:

- a. If he was scheduled on a Sunday, he could take another day that week as a day of worship. (Groff Dep. 210:21-24.)
- b. If he was scheduled on a Sunday, he could come in later, after church. (Groff Dep. 215:10-23.)
- c. Management would contact other stations to find coverage for the plaintiff when he was scheduled. If coverage was found, the plaintiff’s absence would be excused. (Gaines Dep. 45:23-

25, 84:21-85:11, Dec. 18, 2019)⁷ (Hess Dep. 33:12-24.)

- d. Within reason, the plaintiff could find his own coverage for when he was scheduled. (Hess Dep. 122:1-8, 126:14-24.)

44. Labor Relations Manager Lyle Gaines, who assisted in developing accommodations, is Christian. (Gaines Dep. 76:9-13, 87:13-19.) He is an ordained minister. (Gaines Dep. 76:9-13.) He respected the plaintiff's religious convictions. (Gaines Dep. 86:14-17.)

45. When the plaintiff was asked to submit a letter from his church to explain his request for an accommodation, the plaintiff did not. (P026.)⁸ Instead he sent an unsigned letter he himself had written. *Id.*

46. The plaintiff rejected all offers made by management. He hoped the USPS would create a position for him that did not require work on Sundays. (Groff Dep. 260:2-22.) He understood that all lateral positions required Sunday work. (Groff Dep. 261:6-12.)

47. The plaintiff never worked on a Sunday, even if he was scheduled. (Groff Dep. 189:14-22.)

48. Postmaster Hess faithfully looked for substitutes for the plaintiff each week, including from other post offices. (Hess Dep. 122:16-123:19.) It was not always easy but he tried. (Hess Decl. ¶10.) Looking for coverage for the plaintiff was a time consuming process, and it added to his workload as well as those

⁷ Cited portions of Labor Relations Manager Gaines's deposition are attached as Exhibit "G."

⁸ Bates-numbered documents produced by the plaintiff (prefix "P") are attached as Exhibit "H."

of the other postmasters at other post offices he was required to contact each week the plaintiff was on the Sunday schedule. (Hess Decl. ¶10.) Many RCAs did not want to work on Sundays. (Hess Decl. ¶10.)

49. Delivering Amazon packages on Sundays created a lot of work. (Gaines Dep. 54:15-21.)

50. The USPS had difficulty getting carriers to work on Sundays. (Evans Dep. 14:6-11, Dec. 17, 2019.)⁹ Many RCAs resigned. (Evans Dep. 14:14; Hess Dep. 75:8-10.) Without sufficient carriers, it sometimes took 15 or 16 hours to get the mail delivered. (Evans Dep. 16:3-7.)

51. When the plaintiff was scheduled and did not work, it upset the other carriers. (Evans Dep. 42:11-18; Hess Dep. 41:17-24.) There were complaints. (French Dep. 23:16-18, Dec. 18, 2019.)¹⁰ There was even discussion of a boycott. (Hess Dep. 41:17-42:6.) One carrier transferred from Holtwood because he felt it was not fair that the plaintiff was not reporting on scheduled Sundays. (Hess Dep. 102:2-14.) Another carrier resigned in part because of the situation. (Hess Dep. 103:4-15.) Another carrier filed a grievance with their union, stating that the preferential treatment given to the plaintiff was unfair to other carriers and violated union contracts.¹¹

⁹ Cited portions of Supervisor Diane Evans's deposition are attached as Exhibit "I."

¹⁰ Cited portions of Postmaster Douglas French's deposition are attached as Exhibit "J."

¹¹ Cited documents are attached as Exhibit "K." These documents were located as the USPS prepared this motion and they were produced to the plaintiff on February 13, 2020. The plaintiff has expressed an intent to object to the USPS's reliance on these

52. When the plaintiff was scheduled and did not work, it complicated the scheduling and planning processes. (Evans Dep. 42:19-43:2; French Dep. 31:5-15; Hess Dep. 82:15-15.)

53. When the plaintiff was scheduled and did not work, it created more difficulties in timely delivering the packages. (Evans Dep. 43:3-13.)

54. Skipping the plaintiff in the rotation meant other carriers had to work more Sundays than they otherwise would have had to. (Hess Dep. 49:3-12, 82:15-21.)

55. When the plaintiff did not work in Sundays, it caused overtime. (Hess Dep. 82:15-24, 95:2-11.)

56. When the plaintiff refused to work on Sundays, sometimes Postmaster Hess instead delivered the packages, which violated the collective bargaining agreement. (Hess Dep. 117:16-119:17.)

57. The plaintiff was scheduled but did not work on the following Sundays: March 19, 2017; April 2, 2017; April 16, 2017; April 23, 2017; May 7, 2017; May 21, 2017; June 11, 2017; July 2, 2017; July 23, 2017; August 6, 2017; August 28, 2017; September 17, 2017; October 1, 2017; October 15, 2017; December 3, 2017; December 17, 2017; January 14, 2018; March 4, 2018, March 18, 2018; March 25, 2018; April 1, 2018; April 8, 2018; April 22, 2018; and May 13, 2018. (Groff Dep. 217: 4-22.) This is a total of 24 scheduled Sundays where no coverage was found for the plaintiff and he did not report to work. *Id.*

documents. They are therefore marked separately from the remainder of the referenced documents produced by the defendant.

58. Postmaster Hess called other carriers trying to find coverage for the plaintiff on Sundays. (Groff Dep. 269:20-22.) Postmaster Hess sometimes found coverage so that the plaintiff did not have to work. (Groff Dep. 19712-19; Hess Dep. 207:7-208:3)

59. The plaintiff acknowledges that RCA Justin Tekely covered some of his Sunday shifts. (Groff Dep. 264:17-22.) In fact he covered for the plaintiff for the entire peak season in 2017 even though he did not want to because he too is Christian and wanted to go to church. (Hess Dep. 34:9-13.) RCA Valerie Gustavsen also covered his Sunday shifts. (Groff Dep. 266:15-24.) She covered for the entire peak season in 2018. (Hess Dep. 34:16-18.) Postmaster Hess was the one who solicited her to cover those shifts. (Groff Dep. 266:22-25.) Postmaster Hess also told the plaintiff he had arranged for RCA Lori Lewis to cover a Sunday shift for the plaintiff. (Groff Dep. 267:18-24.) Postmaster Hess even delivered packages so the plaintiff wouldn't have to work on a Sunday. (Groff Dep. 266:25-267:3) (Hess Dep. 34:13-15.)

60. RCA Tekely liked to attend church on Sundays. (Hess Dep. 33:24-34:19.)

61. The plaintiff asked RCA Moyer if she would work for him on Sundays in 2017. (Hess Dep. 124:22-126: 24.) Postmaster Hess spoke with RCA Moyer and approved this coverage, but she was subsequently injured and was not able to cover for the plaintiff. (Hess Decl. ¶9.)

62. During peak season in 2017, RCA Moyer was not working because she was injured. (Hess Decl. ¶8.) RCA Tekely and the plaintiff were the only two RCAs at Holtwood. (Hess Decl. ¶8.)

63. The plaintiff understood that he could be disciplined if he was scheduled on Sunday and didn't work. (Groff Dep. 205:8-11.)

64. As far as Hess is aware, RCAs who were scheduled and did not report were disciplined equally. The reason for their absence was not considered when issuing discipline. (Hess Decl. ¶11.)

65. The plaintiff does not know how all other employees were treated when they failed to report to work. (Groff Dep. 277:4-13.) He did not know that at least one was terminated for failing to report. (Groff Dep. 277:11-13.)

66. Neither Postmaster Hess nor anyone else in management ever made a negative comments to the plaintiff relating to his religion. (Groff Dep. 286: 21-287:1.)

67. The USPS utilizes a "progressive" system of discipline. Before any discipline is issued, the employee is interviewed. (Groff Dep. 209:4-6.) Then an employee can be issued discipline which normally progresses from a letter of warning, followed by a seven-day suspension, followed by a 14-day suspension. (Groff Dep. 232:7-233:2; Gaines Dep. 68:12-17.)

68. Generally, for every two to three absences, an employee may be disciplined. (Hess Dep. 155:5-13.) A supervisor that allowed an employee to accumulate unexcused absences without issuing discipline could be subject to discipline for failing to carry out the supervisor's responsibilities. (Gaines Dep. 66:16-22).

69. "Paper suspensions" do not cause an employee to lose work or pay. (Hess Dep. 45:17-56:4.)

70. A letter of warning dated June 9, 2017, was issued to the plaintiff. (USPS00236-37.) By this time,

there had been six Sundays where the plaintiff was scheduled, did not work, and where management had found no volunteer to substitute for him. Despite this fact, the letter only addressed the plaintiff's unexcused absences on April 16, 2017, April 23, 2017, and May 7 2017. (USPS00236-37.)

71. The plaintiff had three unexcused absences as of April 16, 2017. (Groff Dep. 221:9-12.) He was not issued a letter of warning for nearly two more months after that date. *Id.* The USPS did not issue him a letter of warning until he had six unexcused absences. (Groff Dep. 221:13-222:2.)

72. A seven-day paper suspension dated January 2, 2018 was issued to the plaintiff. (USPS01927-28.) By this time, there had been 16 Sundays where the plaintiff was scheduled, did not work, and where management had found no volunteer to substitute for him. Despite this fact, the letter only addressed the plaintiff's unexcused absences on December 3, 2017 and December 17, 2017. *Id.*

73. The plaintiff had six unexcused absences as of May 21, 2017. (Groff Dep. 217: 4-22.) He was not issued a seven-day suspension for nearly 8 more months after that date. (USPS01927-28.) When the suspension was issued, it was a paper suspension. *Id.* The USPS did not issue the plaintiff a paper suspension until he had missed 16 total unexcused absences. (Groff Dep. 217:4-22.)

74. A 14-day paper suspension dated October 5, 2018 was issued to the plaintiff. (P021-22.) By this time there had been 24 total Sundays where the plaintiff was scheduled, did not work, and where management had found no volunteer to substitute for him. Despite this fact, the letter only addressed

the plaintiff's unexcused absences on June 17, 2018, August 12, 2018, and August 26, 2018. *Id.*

75. The plaintiff had nine unexcused absences as of July 23, 2017. (Groff Dep. 217: 4-22.) He was not issued a 14-day suspension for over a year and two months after that date. (P021-22.) When the suspension was issued, it was a paper suspension. *Id.* The USPS did not issue him a paper suspension until he had accumulated 24 total unexcused absences.

76. The plaintiff submitted his resignation via letter. (P023; Groff Dep. 127:11-17.) His resignation was effective January 18, 2019. (USPS00003.)

77. On one occasion Postmaster Hess said to the plaintiff that the picture on his badge reminded him of "the guys on the front of that morning's newspaper." (Groff Dep. 239:23-11.) The paper had photos of people who had been arrested for sexual deviance in a local park. (Groff Dep. 240:5-6.) The plaintiff did not contemporaneously report this comment to anyone in management. (Groff Dep. 240:23-241:20.) Nor did he tell Postmaster Hess that he didn't appreciate the comment. (Groff Dep. 242:25-243:4.) He didn't say anything. (Groff Dep. 243:3-4.)

78. Employees in Holtwood sometimes made jokes and teased each other. (Groff Dep. 243:5-244:2.) On one occasion the plaintiff himself posted a fellow employee's photo as a joke. (Groff Dep. 243:13-17.) More than once there was joking in the station about an employee's photo. (Groff Dep. 243:24-244:2.)

79. Postmaster Hess required the plaintiff to deliver the mail, even when there was bad weather. The plaintiff recalled this happening only on two specific occasions. Once there was an ice storm and it caused the plaintiff to be an hour later than the other

carriers in delivering his route. (Groff Dep. 289:11-21.) There was no discussion of religion as part of this incident. (Groff Dep. 355:24-356:20.) Another time Postmaster Hess ordered the plaintiff to assist other carriers who needed help. (Groff Dep. 289:22-290:7.) He never complained to management. (Groff Dep. 292:7-13.) There was no discussion of religion as part of this incident. (Groff Dep. 355:20-23.)

80. It is the nature of the post office to deliver mail in bad weather. (Groff Dep. 291:17-22.)

81. On one occasion, the plaintiff's car was blocked in while delivering the mail. According to the plaintiff, his paycheck was docked for 15 minutes of the waiting time and 8 or 9 miles of reimbursement. (Groff Dep. 333:18-334.) He never reported to Postmaster Hess than he felt hours were missing from his pay card. (Groff Dep. 347:16-348:2.) The plaintiff didn't complain to anyone in management. (Groff Dep. 349:5-16.) There was no discussion of religion as part of this incident. (Groff Dep. 355:5-8.)

82. According to the plaintiff, on Veteran's Day of 2017 there was heavy mail volume. The plaintiff felt overwhelmed and Postmaster Hess helped the other two RCAs. Because it took longer than 8.2 hours to deliver the mail, the plaintiff worked for some time he was not paid for. (Groff Dep. 335:3-17.)

83. At this time, the plaintiff was the most experienced RCA in the station. (Groff Dep. 349:23-25.) One of the other RCAs was still relatively new. (Groff Dep. 350:1-8.) The timecards actually show that the plaintiff had the fewest pieces of mail to deliver and finished his work the earliest. (Groff Dep. 350:9-20.)

84. On many days it took the plaintiff less than 8.2 hours to deliver the mail but he was still paid for the full 8.2. (Groff Dep. 352:3-6.)

85. The plaintiff could not remember any time anyone in management ever made a negative comment to him about his religion. (Groff Dep. 286:21-287:1.)

86. The plaintiff never heard anyone in management say they were out to get him. (Groff Dep. 287:3-6.)

87. When delivering packages, there is a risk of twisting an ankle. (Groff Dep. 248:21-25.)

88. Supervisor Evans denies discriminating against, retaliating against, or treating the plaintiff any differently because of his religion or his religious objection to working on Sundays. (Evans Dep. 43:12-44:3.)

89. Postmaster French denies discriminating against, retaliating against, or treating the plaintiff any differently because of his religion or his religious objection to working on Sundays. (French Dep. 47:21-48:16.)

90. Labor Relations Manager Gaines denies discriminating against, retaliating against, or treating the plaintiff any differently because of his religion or his religious objection to working on Sundays. (Gaines Dep. 87:13-88:9.)

91. Postmaster Hess denies discriminating against, retaliating against, or treating the plaintiff any differently because of his religion or his religious objection to working on Sundays. (Hess Dep. 202:8-203:5.)

92. Postmaster Hess is Christian, describing himself as “a Bible believing Christian saved by grace.” (USPS00132.)

93. Supervisor Evans is Christian. (USPS00153)

94. Postmaster French is Catholic. (USPS00211)

95. On September 26, 2017, the plaintiff, represented by counsel, filed his first EEO complaint alleging religious discrimination because he had been issued the letter of warning. (USPS0062-54). He named as alleged discriminators Supervisor Evans, two other Lancaster Carrier Annex Supervisors (Aaron Zehring and Treva Morris), and the Postmaster of the Lancaster Carrier Annex (Douglas French). *Id.* The only incidents of alleged discrimination described in the plaintiff’s first EEO complaint are: (1) management’s failure to exempt him from Sunday work; and (2) the letter of warning. *Id.*

96. A final agency decision dated October 3, 2017 was issued finding no discrimination. (USPS00284-304.)

97. On April 19, 2018, the plaintiff, represented by counsel, filed his second EEO complaint alleging religious discrimination because he had been issued the seven-day paper suspension. (USPS00310-11.) As alleged discriminator, he named only Postmaster Hess. *Id.* The only incidents of alleged discrimination described in the plaintiff’s second EEO complaint are: (1) management’s continued failure to exempt him from Sunday work; and (2) the seven-day paper suspension. *Id.*

98. During the investigation of the second EEO complaint, the plaintiff raised two additional grievances. (USPS00363-415.)

99. First, he claimed that Postmaster Hess was treating the other two Holtwood Station RCAs, Justin Tekely and Sheila Moyer, “favorably” because they were willing to work on Sundays. *Id.* As evidence of this favorable treatment, the plaintiff claimed that Postmaster Hess helped the other RCAs more often. He could only recall one example of this alleged favorable treatment. *Id.* He described a day when Postmaster Hess helped deliver packages for the other two RCAs and not for the plaintiff. *Id.*

100. When questioned about this day, Postmaster Hess explained why he had helped the RCAs. (USPS00416-37.) The other two RCAs, RCA Tekely and RCA Moyer were newer employees at the time; they were overwhelmed and needed help. *Id.* The plaintiff was more experienced and self-sufficient. *Id.*

101. Moreover, the undisputed evidence revealed that shows that RCA Tekely and RCA Moyer had more mail to deliver and worked later that day. (USPS00496; USPS00480-83.) RCA Tekely had 1,071 more pieces of mail and 85 more packages to deliver that day, as compared to the plaintiff. *Id.* Even with Postmaster Hess’s help, RCA Tekely ended his shift at 7:10pm while the plaintiff ended his shift at 4:51pm. *Id.*

102. RCA Moyer had 814 more pieces of mail and 39 more packages to deliver that day, as compared to the plaintiff. *Id.* Even with Postmaster Hess’s help, RCA Moyer ended her shift at 6:55pm while the plaintiff ended his shift at 4:51pm. *Id.*

103. Second, the plaintiff also claimed that Postmaster Hess “mocked” him. (USPS00363-415.) He could only recall a single incidence of this alleged mocking. *Id.* On that day, Postmaster Hess once

teased the plaintiff about the photo on the plaintiff's employee identification badge. *Id.* The plaintiff never told anyone, including Postmaster Hess that this upset him *Id.*

104. As the plaintiff himself admitted, however, the employees at the Holtwood station teased each other. *Id.* In fact, the plaintiff posted a picture of another of his co-workers as a joke. *Id.* Text messages between the plaintiff and Postmaster Hess reveal no animosity, but rather friendly camaraderie between the two men. (USPS00861-906.)

105. A final agency decision dated April 27, 2018 was issued. (USPS00520-62.). Again, no discrimination was found. *Id.*

106. On April 30, 2019, the plaintiff, represented by counsel, filed his third EEO complaint alleging religious discrimination because he claimed he had been constructively discharged. (USPS00563-610.). He amended the complaint to also challenge the 14-day paper suspension. *Id.* Again, the only alleged discriminator was Postmaster Hess. *Id.*

107. The plaintiff admitted, under oath, that he does not know any of the following: staffing levels (Groff Dep. 158:22-129:11); what happened when he was absent (Groff Dep. 198:2-10); who delivered the packages that would have been assigned to him (Groff Dep. 198:11-13); how long other RCAs had to work to deliver packages the plaintiff would have been assigned to deliver (Groff Dep. 198:14-21); how hard his absence made the job for other RCAs (Groff Dep. 198:23-199:10); how dark it was when the other RCAs finished working due to his absence (Groff Dep. 199:2-6); whether routes had to be split due to his absence (Groff Dep. 199:7-10); whether other employees complained

due to his absence (Groff Dep. 199:11-19); whether his absence made scheduling more difficult (Groff Dep. 199:20-25); or whether his absence made the supervisor's job more difficult (Groff Dep. 200:2-8).

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Dated: February 14, 2020 veronica.finkelstein@usdoj.gov

Exhibit "E"

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CIVIL ACTION NO. 19-CV-1879

GERALD E. GROFF,

Plaintiff,

v.

MEGAN J. BRENNAN, POSTMASTER GENERAL,
UNITED STATES POSTAL SERVICE,

Defendant.

DECLARATION OF BRIAN HESS

I, Brian Hess, make the following declaration in lieu of affidavit pursuant to 28 U.S.C. § 1746 to the best of my knowledge and belief.

1. I am over the age of twenty-one and competent to make this Declaration.

2. I was the Postmaster of the Holtwood, Pennsylvania United States Postal Service ("USPS") station from 2016-2019 during the time period that Gerald E. Groff worked there as a Rural Carrier Associate (an "RCA").

3. RCAs are not guaranteed specific hours or set schedules. They are scheduled on an as-needed basis.

4. As Holtwood Postmaster, I had responsibilities relating to Sunday Amazon delivery, including ensuring its duties were carried out efficiently and by the employees who were hired to do them. I understood

that, to my employer, the USPS, it was critically important that Sunday Amazon delivery be successful.

5. Although I am not the Postmaster of the Quarryville, Pennsylvania USPS station I am familiar with this station. In 2015 and 2016 it had approximately 13-15 part-time and full-time carriers (some rural and some city) to cover approximately 11 mail routes.

6. At that time the Holtwood station had six part-time and full-time carriers to cover three mail routes. At times after that, we were often down one or more RCAs.

7. Prior to the May 2016 Memorandum of Understanding, the scheduling of RCAs on Sundays was left to the discretion of the postmaster. At that time there was no Sunday mail delivered out of the Holtwood station.

8. In December 2017, one RCA assigned to the Holtwood Station, Sheila Moyer, was injured. She went out on leave and did not return until late February 2018. As a result, she was not available to work that peak season. The only two available RCAs were Mr. Groff and Justin Tekely.

9. In 2017, Mr. Groff asked Ms. Moyer if she would cover his Sunday shifts during peak season. I approved this shift swapping. Unfortunately she was injured and subsequently was unable to cover the shifts. Instead Mr. Tekely or I worked all the Sunday shifts.

10. I tried to find other RCAs from other post offices who would volunteer to work for Mr. Groff on Sundays. It was not always easy, it was certainly time consuming, and it added to my workload and those of other postmasters I contacted each week Mr. Groff was

on the Sunday schedule. Many RCAs did not want to work on Sundays.

11. As far as I know, RCAs who were scheduled and did not report for work as scheduled were all disciplined the same. The reason for their absence was not considered. I certainly did not issue discipline to Mr. Groff because he was a Christian.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 14th day of February, 2020.

BY:

/s/ Brian M Hess 2/14/2020

Brian Hess

Exhibit "F"

[1] IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NO. 19-CV-1879

GERALD E. GROFF,

Plaintiff

vs.

MEGAN J. BRENNAN, POSTMASTER GENERAL,
UNITED STATES POSTAL SERVICE,

Defendant

DEPONENT: BRIAN M. HESS

DATE AND TIME:

Monday, December 16, 2019
at 9:30 a.m.

LOCATION: Clymer, Musser & Sarno, P.C.
408 West Chestnut Street Lancaster, PA 17603

BERKS COURT REPORTING SERVICE

By: Lori A. Dilks

Certified Court Reporter

10 Fox Glen Drive

Sinking Spring, Pennsylvania 19608

(610) 678-9984

berkscourtreporting@gmail.com

* * *

[12] Q. When did he start working at Holtwood?

A. I think officially in August of 2016 he came on board.

Q. What was his position?

A. Rural Carrier Associate.

Q. So what's the status of a -- we'll use the acronym RCA. What's the status of an RCA? Are they considered a full-time employee of the Postal Service?

A. No. They are non-career.

Q. Non-career, so what does that mean, non-career?

A. They are not in a -- they don't have benefits, full-time benefits as a regular -- what we would call a regular employee -- full-time employee would have.

Q. And what kind of hours was he working, what kind of schedule?

A. So RCAs, when they're hired, they work a varied schedule covering any drop days -- day off the regular carrier may have or covering sick leave or annual leave as needed. So it's kind of like being on-call, basically. It's as needed.

Q. How many RCAs did you have at Holtwood at that time?

A. There was currently two at Holtwood at [13] that time on the rolls.

Q. This was in roughly the summer of 2016?

A. Yes.

Q. So there was Mr. Groff and who else?

A. I'm trying to think because people have come and gone.

Q. Well, at some point later you hired Mr. Tekely; correct?

A. Yes. Justin was hired and then Sheila Moyer was hired after Justin -- I believe when Gerald came onboard, Lori -- her last name is escaping me -- I think that Lori Schmidt was on the rolls and -- I'm just trying to recall. And I can't recall the other carrier's name at this time, but Gerald would have been the third on the rolls at that point when he came on board.

Q. So are you saying there were two others at the time that Justin was hired? I thought you said there was just one other RCA.

MS. FINKELSTEIN: When Justin was hired or when Gerald was hired?

THE WITNESS: Gerald was on board and then the others had resigned, and Justin came on first.

BY MR. REINACH:

Q. Maybe I misspoke. When Gerald was hired, you had one other RCA who then left?

[14] A. There was two other RCAs.

Q. When Gerald was hired?

A. Correct.

Q. But both of them left?

A. Both of them left within a year's time and Gerald became the Senior RCA, and then Justin and Sheila were hired after --

Q. Got it.

A. -- the following year.

Q. Now, at the time that Gerald started at Holtwood, were RCAs required to deliver for Amazon on Sundays?

A. Holtwood did not deliver Amazon at that time.

Q. So does that mean that people who lived within Holtwood delivery range would not get Amazon packages on Sunday, or were they delivered from somewhere else?

A. Correct, they did not get Sunday Amazon.

Q. When did Sunday Amazon delivery start at Holtwood?

A. So there has never been -- at that point, there was never Amazon Sunday in Holtwood itself. In March of 2016, Sunday Amazon was delivered from the Lancaster Annex where the carriers reported to.

[15] Q. So maybe the question is, when did the requirement begin for the RCAs at Holtwood to participate in Sunday Amazon delivery?

A. March, 2016 -- wait, I'm sorry, it would be March of 2017. I had the timeline wrong.

Q. That's the kind of thing that you certainly are permitted to correct, if need be.

A. It was March of 2017.

Q. When Mr. Groff first came to Holtwood, did you have any discussion with him about why he transferred to Holtwood?

A. He stated he did not want to stay in Quarryville because they had Amazon deliveries there at the time and, due to his religious belief, he did not want to be working on Sundays.

Q. So you knew that from the get-go when he first came to Holtwood?

A. Correct.

Q. At any time did you question the sincerity of Mr. Groff's religious belief about not working on Sunday?

A. No.

Q. In your discussions with others during the disciplinary process and during the process of trying to accommodate Mr. Groff, did anyone in Management or

* * *

[32] belief not to work on the entire day of Sunday; right?

A. Correct.

Q. So telling him he can work -- that he can have off half of the day but has to work in the afternoon still conflicts with the religious belief as he informed you of his belief?

A. Correct. As Postmaster, that was the accommodation I was able to offer. I cannot make up accommodations on my own without going through the proper channels of HR, Labor Relations, Legal Counsel. So that is not something I can do -- decide on my own.

Q. I understand. I'm just trying to clarify that, in fact, as you understood it, this offer that he come in Sunday afternoon did not eliminate the conflict with Mr. Groff's religious belief.

A. Correct.

Q. Now, at any time did you offer Mr. Groff anything else as an accommodation?

A. So he requested the initial written request of an accommodation in early 2018 and then another written request of a lateral transfer to a different position that did not require Sunday work in March of 2018.

It was -- we had a phone teleconference with Lyle Gaines, the Manager of Labor Relations. At that [33] time it was Lyle and myself and Gerald at the Holtwood Post Office on the phone.

Gerald stated -- you know, Lyle asked Gerald what he was requesting. And Gerald, you know, told Lyle that he was hoping for a lateral transfer to another position that did not require Sunday work in a reasonable distance from where he lived.

Since that -- there are no positions in the Postal Service that are non-career that do not require lateral -- I'm sorry -- do not require Sunday work, that accommodation could not be approved.

But at that point it was decided and further to assist Gerald with his request, on Sundays when Gerald was scheduled, I would call or solicit by e-mail all the unscheduled RCAs to see if they would be willing to volunteer to cover Gerald's shift. So that was the second accommodation that was offered of going and soliciting volunteers to cover Gerald's shift.

Q. So as long as there were volunteers to cover his shift, then he wouldn't be disciplined for that?

A. Correct. There was no discipline issued on days we had volunteers to cover a shift for him.

Q. So how successful were you at covering his shifts with volunteers?

[34] A. It's kind of arbitrary. I did the best I could. I mean, during the season -- when it was at the

Lancaster Annex, I didn't have as much control as to what was going on there because I did not manage those employees. Again, I just would send e-mails to try to find volunteers.

When delivery for Sunday Amazon was out of Holtwood, I had the RCAs who were assigned to the Holtwood Post Office to work with. And Justin Tekely -- for the peak season 2017, Justin Tekely did agree to cover Gerald's shifts, but he did not want to because he is a Christian, as well, and would like to go to his church services. But he did cover those shifts. I think one Sunday I actually had to deliver the parcels because for some reason Justin was not available.

And then for the 2018 peak season, Valerie Gustafson, the most recent RCA at Holtwood, agreed to cover all the Sundays for Gerald during peak season. Gustafson is G-U-S-T-A-F-S-O-N.

Q. So I'm confused about one thing. You said that at peak season the scheduling was done out of Lancaster?

A. Incorrect. During peak season, as I said before, Amazon -- the Lancaster Annex decouples and the delivery goes to the individual offices because of [35] the sheer volume of parcels that have to be distributed so everybody can manage the load.

Q. I see. I got it backwards.

A. Correct.

Q. The 14-Day Suspension was issued to Mr. Groff prior to peak season in 2018; correct?

A. Yes. October, 2018, I believe it was.

Q. After that time, were there other Sunday shifts that Mr. Groff had been scheduled for that he had not worked?

A. As I recall, I think that he was not scheduled at the Lancaster Hub at that time. He may have had a day -- a Sunday of vacation. I can't recall exactly, but after the 18 -- I'm sorry -- the 14-Day Suspension was issued, I don't think there was any times he was scheduled at the Lancaster Annex because, actually, they had hired more RCAs and had enough to cover, and they had some more ARCs, as well, I believe. ARC is Assistant Rural Carrier.

So I believe, to answer your question, I don't think there was any Sundays that he was scheduled and did not report after the 14-Day. And then mid-November we moved right into the decoupled where Valerie was delivering from the Holtwood Post Office.

Q. And so the decoupling ends when? When [36] does the holiday peak season end and scheduling go back to Lancaster?

A. Generally it's at Amazon's discretion, but normally it would be like the first or second week into the New Year, whenever they decide that they're ready to go back to the Hub system.

Q. Now, going back to 2018, you testified about how Mr. Groff's Sundays were covered during peak season when delivery was managed out of the Holtwood Post Office.

If I read the record correctly, both the 7-Day and the 14-Day Suspensions pertained to periods of time that were not peak season to times when delivery was managed out of Lancaster.

A. Correct.

Q. So during 2018, do you know how the Sunday schedule was managed as far as covering for Mr. Groff?

A. Are you referring to --

Q. In Lancaster.

A. Not peak season?

Q. Not peak season.

A. At that point, I think Kelly Miller was the one creating the Amazon schedule.

Q. So it was not Diane Evans at that point?

[37] A. I'm going off memory, but I think -- I'm not sure exactly when Diane left Lancaster, but I think in early 2018 Kelly Miller started taking over the scheduling. Originally it was Diane Evans and then when Diane left, Kelly Miller took over.

Q. Where did Diane Evans go?

A. I do not know. I think she may have left the Postal Service.

Q. Well, isn't it true that Lancaster was scheduling more people on Sundays because it was known that Mr. Groff would not show up?

A. On Sundays when Gerald was scheduled in first for Amazon, they would schedule an extra person because they knew Gerald was not gonna show up after several months of -- well, almost a year at that point.

Q. We're talking now non-peak season scheduling done in 2018 out of Lancaster; correct?

A. Correct.

Q. So they would schedule an extra person because they knew on the Sundays that Mr. Groff should have been on the schedule, they knew that he wasn't gonna work?

A. He was on the schedule, but they were planning ahead that he would not show up.

Q. So the way that Amazon packages were [38] delivered during 2018 on those Sundays on the routes that Mr. Groff was scheduled to deliver, someone else was delivering those packages?

MS. FINKELSTEIN: Objection. If you know.

THE WITNESS: Someone else was delivering them that probably would have had the day off.

BY MR. REINACH:

Q. Do you know how many -- so we're focused on 2018 now. Do you know how many employees were in the rotation for Sunday Amazon delivery in Lancaster?

A. I do not know the number off the top of my head, but it would be in the e-mails that were submitted with the scheduling. That was -- so if you look at that e-mail, it would start with the volunteers, people who wanted to work every Sunday. Underneath that would be the ARCs, Assistant Rural Carriers, who only work Sundays and holidays delivering Amazon.

So the hierarchy was the volunteers first, ARCs, and then the RCAs, who may have signed up that they didn't want to work Sunday, but they had to work Sunday because there was not enough people to deliver the mail because of not enough volunteers and ARCs, and then they could use PTFs, RCAs, if necessary, to cover.

Q. Do you know how often any individual would have to work on Sunday of the regular -- well, [39] let's just say -- let me withdraw the question.

So the ARCs are hired specifically to work Sundays and holidays, you said; right?

A. Correct, but they could only be hired at certain facilities based on the size and the volume of mail they managed.

Q. So any of the ARCs on the schedule, they're working every Sunday regardless pretty much; right?

A. If there are any, correct.

Q. And the RCAs are mandated to work Sundays?

A. Volunteers were solicited first, and then non-volunteers were scheduled on a rotating basis based alphabetically on last name. So the schedule could vary. There was no set every other Sunday. It could be a couple Sundays in a row. It was all based on volume and how many volunteers and people are on -- 'cause within the Postal Service there was a lot of turnover in that position, so it varied throughout the year how many people were available to cover Sundays and holidays for the Amazon delivery.

Q. And the regular carriers were also -- the Career Carriers were also delivering on Sundays?

A. So, again, during peak season --

[40] Q. I'm not talking about peak season now. I'm talking about non-peak season, when it's managed out of Lancaster, specific to 2018.

A. I can't answer that question because I did not manage the schedule there, so I don't know who was reporting for work.

Q. And you think Kelly Miller is the one who was managing the schedule at that time?

A. Correct.

Q. And Diane Evans would have been in 2017?

A. To the best of my knowledge, yes.

Q. And was Keith Krempa -- what was his position there? He was at Lancaster; right?

A. No. He is Post Office Operations Manager, so he oversees and manages the Postmaster's at the individual offices. So he was my immediate manager. He may not have been Doug French's immediate manager. Larger post offices have different POOMs or Post Office Operations Managers.

MS. FINKELSTEIN: POOM is P-O-O-M.

THE REPORTER: Thank you.

BY MR. REINACH:

Q. Do you know, who is Dave Schmidt?

A. Dave Schmidt was Postmaster at Narvon, and at different times serves as the Acting Post Office [41] Operations Manager or POOM.

Q. Do you know if he was acting POOM at any time in 2018?

A. Yes. I think on two different occasions he served as POOM.

Q. So returning to 2018, if I understood your testimony, Lancaster was scheduling an extra person to work on Sundays because they knew Mr. Groff -- on those days that Mr. Groff would have been scheduled because they knew he wasn't going to work; right?

A. Correct.

Q. And to your understanding, that system was working pretty well for them; right?

MS. FINKELSTEIN: Objection. If you know.

THE WITNESS: I don't know that.

BY MR. REINACH:

Q. Do you know if anybody complained about that?

A. Yes. I heard, just through the grapevine, that many of the RCAs were upset that Gerald was not working on Sundays. And actually, I believe it was around June of 2018, many of the RCAs were talking about boycotting a Sunday because of his not having to deliver Sunday Amazon.

Q. When you say you heard through the [42] grapevine about a potential boycott of a Sunday, do you recall who you heard that from?

A. I believe it was Angela Moore, who at that time was RCA Kirkwood. And she was one of the individuals reporting to the Lancaster Annex to deliver Sunday Amazon.

Q. Did you follow up and have any discussions with anyone in management about this boycott that you heard about?

A. I did talk to Kelly Miller, and I think the manager at that time was still Aaron Zehring, Manager of Customer Services -- Zehring, Z-E-H-R-I-N-G -- at the Lancaster Carrier Annex. This was at the time we were talking about Gerald's second request for his accommodation.

I'm not sure why, but I had been in contact with them and we talked about that, seeing if they could offer anything else to him in regards to his request.

Q. And the fact is that they did not offer Mr. Groff any kind of transfer opportunity; right?

A. Correct. They stated there is no non-career position, which is what an RCA is, that is not required to work on Sundays.

Q. Well, so when you say non-career [43] positions, RCA is a non-career position. What other non-career positions were there in the vicinity of Lancaster in 2018?

A. So we have Postal Support Employees, PSEs, who support the clerk craft. There are City Carrier Assistants, CCAs, that support the city delivery. We have the Rural Carrier Associates, RCAs, ARCs, Assistant Rural Carriers. And I believe the Mail Handler Union has casual mail handlers, who are like a non-career type position, who move mail inside the processing plants and stuff. And basically in the Postal Service that's your entry level job to come into the Postal Service to eventually get a full-time job, through those positions.

Q. When you say move mail inside processing plants, that would be in Harrisburg; correct?

A. Well, there's -- there's mail handlers in some of the larger facilities, as well, depending on the size.

Q. Did you ever have any discussion with any one, with Mr. Gaines in Labor Relations or anyone else, about whether Mr. Groff could be transferred to a position at the processing plant in Harrisburg?

A. We had that conversation with Lyle Gaines on the teleconference, but at that teleconference Gerald stated he did not want to travel more than -- he [44] wanted to stay relatively close to his current location.

So Harrisburg was out of the question from how I interpreted to him how he responded to the question.

Q. Well, didn't he tell Mr. Gaines that he wanted to be within, say, 50 miles of where he lived?

A. I can't recall what radius was given.

Q. Do you know where Gerald lives, what town he lives in?

A. Yes.

Q. Do you know how far it is from there to Harrisburg?

A. Over an hour.

Q. It's about 50 miles, isn't it?

A. That sounds approximate.

Q. So you didn't think that Mr. Groff would be willing to go to Harrisburg if it would accommodate his not working on Sundays. Is that your --

A. That was the impression I was left with from the teleconference we had with Lyle.

Q. But he didn't actually say that, did he?

A. He did say something along the -- to the effect that he would like to be close to home. I can't recall the exact -- I don't know if there was exact mileage or time, travel time, but he did say within a reasonable distance.

[45] Q. And clearly he was not offered to transfer to Harrisburg?

A. There was no offer. And generally I would offer Gerald opportunities to work in other offices locally within 20 minutes, 30 at the max, and he would always refuse to go to those offices to work.

Q. Do you know why? It wasn't distance, was it?

A. He never stated. And as an RCA, they're not -- at that point in time, they were not obligated to be forced to go anywhere.

Q. But he never told you that he didn't want to go do a different route because it was too far away, did he?

A. He never said that, but he never went either, so I don't know what his reason was.

Q. Fair. So coming back to the disciplines, the 7- and the 14-Day Suspensions, Mr. Groff didn't actually lose any work or pay as a result of these Suspensions; right?

A. That is correct.

Q. They were considered Paper Suspensions?

A. Yes.

Q. What is a Paper Suspension?

A. So basically I describe it as discipline [46] on paper, that this is a serious -- we're looking at this seriously, you're not missing any work, but it was on paper he was still allowed to work. Which was normal for a lot of Postal Service issued discipline.

Q. Is that in keeping with the philosophy or the practice that discipline is designed to be corrective rather than punitive?

A. That seems very plausible. I'm not sure why they offered it, but it seems very plausible.

Q. In Mr. Groff's case, who decides whether these would be Paper Suspensions rather than actual Suspensions with loss of work and pay?

A. I guess when I would submit the paperwork from the PDI to Labor Relations, I would have said

what I thought was a -- what the next step or what should be issued, and they would look at it and go off with my recommendation.

But I can't say for certain that I would say it's a paper or -- I don't think that was an option in the paper I submitted. I would have to see the paperwork again. So maybe Labor Relations decided who -- if it was paper or not available to work.

And if it was a safety issue, that would be when we would probably -- they would not give him a paper, and they would put him on special placement.

[47] Q. So in Mr. Groff's case, you're not sure if you're the one who recommended the Paper Suspension or if it came from Labor Relations?

A. That's correct. I submitted the information from the PDI, and I think I would just select the different progressions. I don't think it was my decision to say whether it was paper or not.

Q. So then after the 14-Day was issued, if Mr. Groff continued to not work scheduled Sundays, then you would proceed and issue the next step in progressive discipline?

A. Correct, if he continued to miss Sundays as scheduled.

Q. If I understood your testimony earlier, at the time that he resigned in January of this year, of 2019, you don't believe that he had missed scheduled Sundays over the peak season?

A. He did not because Valerie Gustafson had covered -- I would have to see the paperwork again. As I said, going off recollection from when the 14-Day was issued, maybe there was. I would have to see the paperwork.

And then peak would have ended the first week of January, 2019, so the Hub would have been reinstated and they would have been scheduling. So was [48] there Sundays there that he missed? I'd have to see the paperwork and scheduling.

Q. Now, on the times that the Hub was scheduling an extra person because they knew Mr. Groff would not be coming in, were those considered disciplinary occasions?

A. Yes.

Q. And why is that?

A. Because Gerald was scheduled to work, and he was not reporting to work as scheduled. After he declined the accommodation of the flexible start time and after it was exhausted search of available RCAs to volunteer for him, it was determined after the March, 2018 accommodation request that I would do a search of all available RCAs, if none were available or volunteered, Gerald would be scheduled to work.

Q. So the only Sundays that Gerald would be off the hook disciplinary-wise when he was scheduled is when you found a volunteer?

A. Or he was not scheduled or he submitted leave for vacation time.

Q. Sure. And on the Sundays that they simply scheduled another person to cover because you didn't have a volunteer, the packages were delivered; right?

[49] MS. FINKELSTEIN: Objection. If you know.

BY MR. REINACH:

Q. Let me ask you a different question. Did you ever learn that the Postal Service operations of delivering packages for Amazon on Sundays were

compromised in some way, delayed or packages not delivered because of Mr. Groff's not participating in Sunday delivery?

A. I don't know that any packages were compromised, but I knew that other RCA's schedules were compromised by having to give up their Sunday that they would have had off.

Q. Let's take a closer look at that. There were many times where other RCAs voluntarily worked those Sundays; right?

A. Yes and no. So yes when delivery was out of Holtwood, most of the Sundays were covered for Gerald. No when it was delivered from the Lancaster Hub because I think there were only three, maybe four at the most Sundays that other people volunteered for Gerald through -- from March, 2017 through January, 2019.

Q. When did Valerie Gustafson begin working at Holtwood?

A. I believe her official hire -- I believe she officially began in Holtwood in July, 2018. Again, [50] I'd have to see the paperwork to say for sure, but I think that's the timeline.

Q. Do you know if she ever volunteered to cover a Sunday for Gerald at the Lancaster Hub?

A. I can't recall any off the top of my memory. 'Cause to that point, Valerie, RCAs in Holtwood used their own vehicle for delivery. And Valerie preferred to use her own vehicle for delivery, so that's why she volunteered to deliver out of Holtwood. When they go to the Lancaster Carrier Annex, they are required to use the LLVs, which are the white mail trucks, LLVs, Long Life Vehicle mail truck. She did not prefer using

those 'cause she didn't feel safe driving them 'cause she was not used to driving them on a daily basis like a lot of the other carriers.

So that was why she would volunteer to cover Holtwood 'cause she could use her own vehicle versus volunteer to work in Lancaster because she did not like using the LLVs.

Q. So I think I need to clear up something else. When Lancaster was scheduling an extra person on Sundays on Mr. Groff's account, was it always or only an RCA that would be scheduled --

A. I can't answer --

Q. -- or was it anyone else?

[51] A. I can't answer that question because I did not do the scheduling.

MR. REINACH: Excuse me.

(Discussion was held off the record.)

BY MR. REINACH:

Q. You first attempted to issue a 14-Day Suspension to Mr. Groff in early 2018. Do you recall that?

A. Yes.

Q. What was that based on?

A. Him not reporting to work as scheduled for Sunday deliveries.

Q. And what time period was the basis of the discipline?

A. I think there was three dates included in that discipline. Again, I'd have to see the documentation to recall.

Q. And we'll look at that this afternoon. We'll be going through documents. I'm just trying to get some of the facts here from your testimony before we go looking at documents.

A. And I don't want to guess at things and give you inaccurate information.

Q. Fair enough. But you ultimately did not issue the 14-Day there in the beginning of 2018; right?

[52] A. Correct.

Q. Why not?

A. So after the PDI, consulting with Labor Relations, there was a new individual handling -- writing the discipline, and she had a lot of questions.

Q. Do you remember who that was?

A. I'm trying to recall the names. Her name was -- she's no longer --

Q. Gabriel?

A. Yes, Gabriella --

Q. Jessica Gabriel?

A. Jessica Gabriel, that's correct. She was the one writing the discipline at that time, I believe. Again, I'd have to see the documents to be for sure. But she had some questions, and at this point, this is when I consulted with Lyle some more in regards to her question, and the Legal team from Philadelphia was consulted, as well, as to how to properly proceed because this is a very delicate case and we did not want to violate anybody's rights for attending their religious services.

So with their consultation and alongside of Gerald's written request for religious accommodation, we -- I

did not pursue any discipline at that time because I was trying to work through all the different elements to [53] make sure we were doing the correct thing and handling the case correctly.

Q. And at some point you were directed to have some kind of religious accommodation meeting with Mr. Groff?

A. So the Postal Service has what we call the DRAC, D-R-A-C.

Q. What is that? I couldn't figure that out.

A. I'm trying to think of the acronym. I'm sorry. It's a Dispute -- no. District Reasonable Accommodation Committee. It took me awhile to get it, but, yeah, DRAC, District Reasonable Accommodation Committee, which was made up of individuals in HR, Labor Relations, the Medical Unit. And after consulting them, we realized that the DRAC does not handle religious accommodations. It's only for more like physical --

Q. Disability?

A. Disability. Correct. So that was not an option after we -- we looked into that avenue, and it was not an option.

Q. So the Postal Service has an actual team or individuals designated to address accommodations based on physical disabilities, but they don't have a similar system set up to deal with religious accommodations?

[54] MS. FINKELSTEIN: Objection. If you know.

THE WITNESS: I can't answer that question.

BY MR. REINACH:

Q. Did anyone tell you that there was a -- you know, individuals functioning similar to the DRAC in terms of dealing with religious accommodations?

A. I did not receive any information in regards to that.

Q. So in terms of input that you received as far as what to do to accommodate Mr. Groff, you got input from Labor Relations and from Legal; correct?

A. Correct.

Q. Anybody else?

A. I'm sure HR was consulted, as well, during the process.

Q. Do you remember anyone in particular in HR?

A. In the beginning, back in March of 2017 when we were trying to understand all this -- she is no longer in the Central PA District, she's now down South somewhere as the HR Director, and her name -- it's escaping me -- but the HR Director at that time. Now it is Ms. White, but this was before her tenure.

Q. There's reference to you were concerned [55] that -- in early 2018, that the discipline process was taking longer than 30 days and whether it was still timely; right?

A. I did -- the Postal Service policy is discipline has to be issued within 30 days of the Pre-Disciplinary Interview.

Q. I see, within 30 days of the PDI?

A. Correct.

Q. So what would happen if a discipline is issued more than 30 days after a PDI?

A. I can't really answer that, but my assumption would be -- from just -- I have never dealt with discipline a lot, but after that 30 days, many times the Unions could grieve it and have it overturned. But I've never had to deal with that, but that would be the reason, that's why the timeliness is important.

Q. Did you have any input from the Union with respect to Mr. Groff?

A. They did give me an Affidavit back in 2000 -- probably the summer of 2017 in regards to the issue with Gerald not reporting as scheduled. I answered the Affidavit, but that's really the only interaction I had with the Rural Carrier Letters Association.

The only other times is when the stewards would come and represent him at the PDIs, but I did not -- [56] that's the only time I really interacted, when they gave me a questionnaire to fill out.

Q. So I'm familiar with -- there were a number of investigations conducted in response to Mr. Groff filing EEO Complaints. And I know that you had to prepare Affidavits for those investigations, but you're saying that the Union, the Rural Carriers Association, gave you a questionnaire concerning Mr. Groff?

A. Right. It was basically general information of how many RCAs I had, did any refuse to work, and did I support them not working. It was like a two-page questionnaire I completed. Correct. And I believe it was a timeline of March -- I'm sorry -- summer of -- probably June, 2017.

MR. REINACH: Veronica, maybe I missed something.

MS. FINKELSTEIN: We produced it.

MR. REINACH: It is produced?

MS. FINKELSTEIN: When we're on a break, I can try to find you the Bates number, but I know we produced it. It's like a form and he's got his -- you know, a series of questions and his answers are under each question.

MR. REINACH: I appreciate your doing that.

[57] MS. FINKELSTEIN: The Union Rep is a female. I'm blanking on her name.

THE WITNESS: Chrissy Miller.

MS. FINKELSTEIN: Chrissy Miller, yes.

MR. REINACH: There's sufficient -- thousands of pages here that if we've missed something --

MS. FINKELSTEIN: I can certainly give you the Bates number. I don't know how quickly, but if we have a break, I will try to find it for you.

MR. REINACH: I'd appreciate that.

BY MR. REINACH:

Q. Did anyone representing the Union at any time express to you any kind of opinion as to Mr. Groff's situation?

A. No. They would normally consult with Gerald before the PDI and maybe afterward, and I was not privy to any of that information.

Q. And at the PDI, would the Union person, the Union steward express either support or opposition to the proposed discipline or to -- I guess the PDI is not -- you're not actually proposing discipline. You're just dealing with the facts; right?

A. Trying to collect the information to get both sides of the story.

Q. Is it fair to say that, to your [58] knowledge, the Union did not take a position with respect to Mr. Groff's situation?

A. I can't acknowledge that. I don't know what their position was or if they had one.

Q. Well, if they had one, they didn't express it to you.

A. True.

Q. And you didn't hear secondhand from anyone else that the Union had weighed in on Mr. Groff's situation?

A. No.

Q. Did you ever learn whether any other employees filed a grievance, complaining that they were having to work more because Mr. Groff was not working on Sundays?

A. The grievance process is a confidential system, so that would not be discussed with anybody who is not directly involved with the situation it was filed for.

Q. So initially you were looking at a 14-Day Suspension in the early part of 2018, but no 14-Day was issued until the fall of 2018; correct?

A. Correct. So those Sundays from March of 2018 when the initial 14-Day was proposed through October -- I'm sorry -- through June when we got clarification on [59] what the process would be, how to handle the situation, none of those Sundays that Gerald missed were used for disciplinary reasons, to my knowledge. Again, I would have to see the paperwork.

Q. So what was the significance of June?

A. That's when I received messaging back from Lyle Gaines in regards to how the situation would be handled, that I would solicit volunteers from those RCAs that were not scheduled. If someone volunteered, Gerald's shift was covered. If no one volunteered, Gerald would be required to work. So no discipline was issued during that time as we worked out how to properly handle the case.

Q. We have tons of e-mails here, so I'll tell you what we're going to need to do because of the way that they're done. They should be in both dates and Bate number sequence. So if you open up what we're looking for, at the bottom right corner you see that there are numbers there, Mr. Hess?

A. Yes.

Q. The bottom right corner, USPS and then numbers, so they should be in sequence. We're looking towards the end for No. 3274. So it's almost -- it's pretty close to the end.

A. Could I comment real quick?

* * *

[80] eight hours per each date; correct?

A. Correct.

Q. So the first one is June 17; it's not June 6 and June 17.

A. Correct.

Q. I just wanted to clear that up. Thank you. So this was issued in October. So between June 7, the date of the e-mail exchange we looked at in Exhibit 1,

and this date, there were three dates for which Mr. Groff was charged; correct?

A. Correct.

Q. So the rest of any Sundays that he would have been scheduled were covered somehow?

A. Correct.

Q. So I was asking you about any accommodations that were offered or discussed with Mr. Groff, and you gave me a number of them. Are there any that we're missing, any other accommodations that were offered to Mr. Groff?

A. Again, I could not offer the accommodation myself; it would have to come from above me. So I can't make up my own accommodations to offer him.

Q. I understand. I'm just trying to understand the universe here of what happened and what [81] was on the table. So there's nothing else that you are aware of that was offered to Mr. Groff. Is that correct?

A. To my knowledge, no.

Q. Now, one of the concerns that the Postal Service had in terms of what kinds of accommodations could be made for Mr. Groff was whether they would result in some kind of hardship on the Postal Service. Is that correct?

MS. FINKELSTEIN: Objection. You can answer.

THE WITNESS: That's part of the EEO compliance, is there an undue hardship.

BY MR. REINACH:

Q. So it was your understanding that the Postal Service did not have to accommodate if the accommodation would be an undue hardship?

A. That is correct.

Q. And you learned that how?

MS. FINKELSTEIN: I'm going to object to the extent that it was a discussion with Counsel. If it's not a discussion with Counsel, you're welcome to answer it.

THE WITNESS: I was not advised by any of the management about what met the criteria.

BY MR. REINACH:

[82] Q. Did you have an understanding as to what was an undue hardship?

A. It was never -- no one -- I mean, that's something that has to be for each situation analyzed. No one provided me direct information about what meets that criteria.

Q. But is it fair to say that if Mr. Groff's scheduled deliveries were being made by somebody, that you didn't consider it to be a hardship on the Postal Service?

MS. FINKELSTEIN: Objection.

THE WITNESS: It was a hardship for the Postal Service.

BY MR. REINACH:

Q. So can you explain what the hardship was for the Postal Service when Mr. Groff's Sundays were covered by someone else?

A. Other carriers were being forced to cover his shifts and give up their family time, their ability to attend church services if they would have liked to. The Postal Service had to issue overtime to other carriers to cover that route. So the more carriers you used on a

Sunday, the more likely they were to run into overtime throughout the rest of the week. So it accrued more overtime for somebody else. It meant [83] somebody else giving up their time to worship as they would want to. For some -- for another RCA to have family time.

It created -- in my office personally it created a tense atmosphere with the other RCAs. I did not discuss Gerald's case personally with anyone due to the nature of the case, but there was many people asking and I could not comment. So it meant the Postal Service losing some very good employees who thought things weren't being handled fairly.

And also, it created more work for me when I had to, every week when the schedule came out, solicit other RCAs to cover his shift when no other Postmasters had to go to that length to accommodate any of their RCAs who covered Sunday Amazon.

Q. Is there anything else that you can think of that you thought were a hardship on the Postal Service because Mr. Groff did not work on Sundays?

A. I think my previous answer pretty well covers that.

Q. So let's take a look at some of these things. First of all, is it fair to say that you don't purport to be an expert on what the law regards as a sufficient undue hardship; right?

A. That's correct. I am not Labor

* * *

[92] covered from ARCs and RCAs?

A. Correct. ARCs would be chosen first because that's the most cost-effective way. Then RCAs were the

second option, and they could force PTF RCAs if needed. I don't think they ever -- I don't know that they ever did that.

Q. I'm sorry, you said PTFs?

A. Correct.

Q. So explain what a PTF is.

A. So in some larger offices where they have trouble hiring RCAs, they invoke what they call the formula. And like say your office has ten rural routes and you've tried for a year, you can't hire any subs, they invoke the formula, and they give the regular carriers one day off during the week, and that PTF, part-time flexible, RCA would cover those routes. So they created a full-time position to give the regular carriers their day off because it is very hard to hire RCAs. And hence is why they always had to have a list and force people in on Sundays to work because the list was always -- it's very hard to hire RCAs.

Q. So the PTF was a full-time position?

A. No, part-time flexible, PTF.

Q. I thought I understood you to say that they would hire a full-time position to cover for the [93] carrier's days off?

A. I never had a PTF RCA, I've never worked around one, but my understanding is they would create a PTF position, not guaranteed any amount of hours, but they would cover the days off in the week to give the regular carriers off if need be in certain offices that invoked the formula, which is -- that's another different topic.

Q. Whether or not RCAs earn sick leave, the fact is people get sick, and some RCAs would not be available to work on Sunday if they were sick. Is that correct?

A. Yes.

Q. And if someone who was otherwise expected and scheduled to work on a Sunday, an RCA, if they were sick, then someone else would have to cover for them; right?

A. I don't know how they covered the routes. They may have doubled the routes up. I didn't do the scheduling, I didn't manage Sunday delivery in Lancaster, so I can't answer as to how they handled the short-staffed days.

Q. Did you have any occasions in Holtwood, when you were scheduling during peak season, when you had to double up routes?

[94] A. During peak season I only used one RCA, so we never had to double up just because of the volume we received. It's all based on the number of packages.

Q. You said that peak season was determined by Amazon when it would begin and end; correct?

A. They worked with the Postal Service upper management on whatever the agreement was. That's not something I dealt with.

Q. So in 2017, do you recall approximately what the duration of peak season was, when it began and when it ended?

A. To the best of my knowledge, it began the Sunday before Thanksgiving and I think it was two Sundays into 2018, the New Year. That's off recollection. I'd have to see documentation on the schedules I submitted.

Q. What about in 2018, was it similar?

A. Similar. The week before Thanksgiving and then I think it ended the first Sunday in the New Year, 2019.

Q. Now, you said when I was asking you about hardships, you said that they may have forced city carriers to work rural routes. Do you know whether city carriers were ever required to work rural routes on account of Mr. Groff not working a Sunday?

[95] A. I don't know the answer to that.

Q. Do you know whether the Postal Service incurred any overtime pay as a result of Mr. Groff not working a Sunday?

A. I wouldn't know about the Lancaster side, but when working out of Holtwood, based on using RCAs every day of the week because of package volume, I'm sure, inevitably, the other RCAs that were working went into overtime. I would have to check time keeping. I don't have that documentation.

Just in regards you had asked earlier about the hardship of it being on the Postal Service, so there were Sundays peak season when deliveries out of Holtwood, Gerald refused to work every Sunday that he was required. I think there was one time when Justin Tekely was not available and one time when Valerie was not available due to car issues or something which forced me, as the Postmaster, to go out and take care of delivering the packages to cover the Sunday so the operation would work smoothly the rest of the week and on Monday -- if I didn't deliver, Mondays would have been unmanageable and it would have delayed mail for customers. And it would have

had an effect on their delivery times and possibly not meeting the mail truck.

Q. Did you have any resentment that you had [96] to go and deliver on a Sunday?

A. No, because that's my job as the Postmaster, to make sure the office runs smoothly. I didn't have a problem with it. I would prefer to be in church with my family, but as a Manager, that's my responsibility to make sure it's covered and the customer service doesn't suffer.

Q. You know, I appreciate your answer that you prefer to be in church on Sunday with your family. Did you have any feelings about being in the position of having to discipline Mr. Groff because, you know, he was, you know -- however you want to say it, but he was determined to observe his beliefs about Sunday and church and his religion, did you have any feelings about that?

A. Could you rephrase -- state your question again?

Q. You were in a management position. You're a Christian yourself, aren't you?

A. Correct.

Q. And you like to attend church on Sunday with your family, as you just said; right?

MS. FINKELSTEIN: I'll allow a little bit of questioning about his religion, but this case is not about his religion.

MR. REINACH: I agree.

[97] BY MR. REINACH:

Q. You like to be in church on Sunday with your family; right?

A. Yes.

Q. So you were in the position, as Mr. Groff's Manager, of having to discipline him for not working on Sundays. Did you have any feelings about that?

A. It was difficult, but at the same time, I'm the Manager for the Postal Service, and I have to do the right thing for the business and follow the rules and regulations that I've been in charge of. I cannot discipline one person for refusing to work and let somebody else get away with it. That's not consistency as the manager, and you're just creating a very disharmonious workplace.

And I did not regret carrying those Sundays. Actually, the last two years I've worked every Sunday so my clerk would not have to work seven days a week, come in to prep the mail for the RCAs to take out.

So it was not about me giving up a Sunday. It was - - I had no problem doing what I needed to do to do my job effectively.

Q. So when you -- there's a couple of things I want to follow-up with. You said you can't discipline [98] one person and let someone else get away with it. So you understood that anybody who wasn't working on Sundays when scheduled needed to be disciplined the same. Is that correct?

A. Correct. And that's how the situation was handled regardless if it was in Lancaster or at a local Post Office.

Q. If I recall from Exhibit 2, the Letter of Warning, the basic premise here is the charge Unsatisfactory Attendance-Failure to be Regular in Attendance.

A. Again, this is not discipline that I issued --

Q. I understand.

A. -- or drafted.

Q. And if you look at -- where's the 7-Day? I have the 14-Day here.

MS. FINKELSTEIN: It's 4.

MR. REINACH: Let me see your 7-Day for a second.

MS. FINKELSTEIN: It's No. 4.

(Witness complies.)

BY MR. REINACH:

Q. That's interesting. So on the 14-Day, which is Exhibit 3, again, at the top it says [99] Unsatisfactory Attendance. Do you see that?

A. Yes.

Q. So from your standpoint as a manager, it didn't matter whether the unsatisfactory attendance was because of someone's religious beliefs or some other reason, you had to discipline everyone according to the same policies; right?

A. If I understand you correctly, you're stating that the discipline issue wasn't for religious reasons. Is that what you're stating -- asking?

Q. Well, not exactly. I'm saying the Postal Service has attendance policies that you understood needed to be enforced consistently regardless of the reason for someone's violation of the attendance policy.

A. I can't say I totally agree. That's a very broad statement. There's a lot of different situations that could happen in a person's life that may justify them being off.

Q. Well, so let's take a look at that. Are there any that you have encountered in your years as a Postmaster where someone had an attendance issue, but it was excused in some way?

A. Those would be covered under Family Medical Leave Act.

Q. Did you have occasions where individuals [100] under your supervision had, what we call, intermittent FMLA, which is to say instead of taking time off in a block, they were permitted to take one or two days, say, at a time?

A. Yes, I did.

Q. And that was because of Federal laws that grant them certain rights?

MS. FINKELSTEIN: Objection.

THE WITNESS: That's correct. There's documentation that's filled out for those type of absences.

BY MR. REINACH:

Q. Do you recall whether you ever had anyone under your supervision taking FMLA leave who had to take the same day off every week?

A. Never had that situation.

Q. Now, you said that you worked every Sunday so that your clerk did not have to work seven days a week.

A. That's correct.

Q. For what time period?

A. For the peak season, generally from the Sunday before Thanksgiving till the first or second Sunday into the New Year.

Q. And how many hours would you have to work [101] on a Sunday when you're substituting for your clerk?

A. It varied, a lot of factors. On Sundays Amazon was notorious for arriving late, but on average, I'd say it was two hours or less, and I was able to leave to still be able to attend my church services.

Q. What kind of work did you do on those Sundays?

A. Distributed the parcels and created the parcel routes for the RCAs. So it was prepared for them when they arrived for delivery.

Q. Maybe I misunderstood because now you're saying RCAs plural. I thought there was only one route on a Sunday.

A. Well, there's multiple Sundays. That's why. And different ones will -- plural, one every Sunday.

Q. Okay.

A. I'm sorry, not plural for the year but -- or the season, but only one was scheduled every Sunday.

Q. When I asked you about hardships that the Post Office suffered on account of Mr. Groff not working on Sundays, one of the things that you said was that you lost very good employees who thought things weren't being handled fairly. Do you recall saying that?

[102] A. Correct.

Q. So are you saying that there were some employees who actually quit because they thought that Groff was getting off too easy?

A. Actually, they mentioned it to Sheila Moyer, and Justin Tekely mentioned to me that they thought it was not fair that Gerald was not having to work on

Sundays. And obviously I did not discuss the case with them because this was a personal issue, so they weren't aware of all the -- what was going on.

Eventually, Justin Tekely transferred from Holtwood to the Strasburg Post Office. After the fact, I heard one of the reasons was because of the situation with Gerald.

Q. So you heard that from whom? Did Justin tell you himself?

A. It was not from Justin himself.

Q. That's really what I needed to know. Sheila Moyer was out with an injury for a time, and then came back briefly after that?

A. Yes.

Q. But then she quit the Postal Service altogether?

A. She resigned to take a full-time job outside the Postal Service.

[103] Q. So that didn't have anything to do with Mr. Groff, did it?

A. No.

Q. So other than hearing that Justin had transferred because he didn't like the situation with Groff not working Sundays, was there anyone else that you believed had left or quit because of Groff not working Sundays?

A. Angie Moore, who was an RCA at the Kirkwood Post Office, resigned. And she had stated to me before that she was frustrated that Gerald did not have to work Sundays, and she would have to go in and work. I don't know if it was -- I don't think her total

motivation was because of Gerald, but it could have been a mitigating factor.

Q. She never told you that she quit because she was frustrated about Sundays; correct?

A. She did not enjoy doing -- she did not enjoy doing Sunday Amazon after being an RCA for so many years and never having to work Sundays, as well.

Q. How long had she been an RCA?

A. I don't know exactly. I want to say, rough estimate, 13 to 15 years, something like that.

Q. But to repeat my question, she never actually told you that Sunday was the reason she was

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[116] from you to the Postal Service that I'm not sure are our business records.

MR. REINACH: Sure.

MS. FINKELSTEIN: Any document that originates from the Postal Service that we've produced I believe would be business records.

MR. REINACH: That's what I'm concerned about.

MS. FINKELSTEIN: They would meet 8036 -- although, actually, 8038 because it's a government entity.

BY MR. REINACH:

Q. So you testified that you covered clerk duties during peak season on Sundays regularly; right?

A. Correct.

Q. And you did that voluntarily?

A. No. I make the schedule, so I scheduled myself to work the Sundays because I know the routes better than the clerk in putting together parcel runs for the RCAs. So I did it intentionally to make efficient runs for the RCAs so they wouldn't be hopscotching around and spending more time out delivering than they needed to.

Q. Was that a violation of the Collective Bargaining Agreement?

A. No it's not Postmasters are allowed [117] to do up to 15 hours of clerk work every week. I have to record those hours every week into a program on the computer. So the hours I worked on Sunday were part of my 15 hours of BUW or Bargaining Unit Work, so I was not violating any contract.

Q. And the rule has to do with not crossing crafts. Isn't that correct?

A. Yes and no. As a Postmaster, doing clerk work is crossing crafts, but we're entitled to do up to 15 hours of clerk work a week, according to the CBA.

Q. Correct, but doing more than that would be considered crossing crafts, depriving clerks of the opportunity to get hours doing clerk work?

A. Correct.

Q. You testified on one occasion you delivered the carrier route on a Sunday when Mr. Groff was scheduled.

A. Correct.

Q. Did that violate the Collective Bargaining Agreement?

A. Well, to correct the record, I think it was more like at least three times during this whole period of

peak, both years, 2017 -- I think it was on three different Sundays where no one was available that I [118] had to deliver.

Could someone file a grievance for that?

Yes, because I was doing RCA rural carrier work, but if there's no RCAs in the office to file the grievance....

Q. Well, so you're saying that the allocation of 15 hours that you're allowed to cross crafts to do clerk work, there was no similar allocation or allowance for you to cross crafts to deliver?

A. No. The Rural Carriers Union could file a grievance for someone doing -- taking hours from an RCA, but there was no one who filed a grievance because there was no RCAs a lot of times in my office to grieve that.

Q. First of all, do you know whether any RCAs knew that you were the one who delivered the packages on a Sunday?

A. The ones that were scheduled I think I -- I'm pretty sure they knew I was the one who ended up delivering the packages.

Q. And they knew that they were not the ones who had to work the Sunday because you did it?

A. Okay. You're losing me. I'm sorry.

Q. All right. I apologize.

A. Okay. To put it in perspective, on one Sunday Valerie Gustafson was scheduled to work to cover [119] for Gerald, as she agreed to, to cover his Sundays during peak season. Her car broke down. She didn't have a vehicle to deliver the packages. So she was

more worried about going to get her vehicle fixed. I told her, don't worry about it, I'll take care it.

So there I have an RCA with no vehicle, Gerald is refusing to work, and I have pallets of parcels sitting there. So I delivered them, so we would be in better -- plus the fact I don't know who was scheduled that Monday. If Valerie's car's still broke, then I'm -- you know, I have that much more to deliver on a Sunday.

Q. My point is Valerie was not upset that you had crossed crafts to deliver the packages on a Sunday.

A. No, but it could be grieved by the rural carriers; whereas, working clerk work, I was within my allotted time, and it was not a grievance situation.

Q. On any of the three Sundays that you delivered packages, were any grievances filed?

A. No. But for the record, I don't think it's the Postmaster's responsibility to be out delivering parcels when there's RCAs on the rolls.

Q. As a Postmaster, you understood that the proverbial buck stopped with you; right?

A. Correct.

[120] Q. That the work of the Post Office had to be completed one way or the other.

A. That's correct.

Q. There's an old saying that I always forget how it goes about rain or sleet or snow not preventing the mail from getting through. Are you familiar with that?

A. Yes.

Q. Can you tell me your recollection of how that goes?

MS. FINKELSTEIN: Is this in some way related to any issue in the case?

MR. REINACH: I think so.

MS. FINKELSTEIN: All right. Tell him the slogan if you remember it.

THE WITNESS: SO there's not a slogan to be correct. It's -- it's not our slogan. It's an inscription on the Post Office in New York that is -- in New York City, but it's not our official slogan, but people have made it that. But it goes, rain, sleet or snow, nor gloom of night shall keep us from our appointed rounds.

BY MR. REINACH:

Q. Thank you very much. I have handled these postal case for years and never taken the time to [121] look that up, and it has long since escaped whatever long-term memory it was in.

So my point, I think, is that in terms of the work of the Holtwood Post Office, you're responsible to see that the duties are carried out; correct?

A. Correct, by the employees who were hired to do them.

Q. And as you've testified, you know, you're the last resort; right?

A. Correct.

Q. As a Postmaster, are you hourly or salaried?

A. Salaried.

Q. So working on a Sunday you don't earn overtime pay, do you?

A. No. It was of no benefit to me financially to work on a Sunday.

Q. Did you ever seek permission to hire an ARC for the Holtwood Post Office?

A. I thought about it. I talked to other offices who had pursued it, but I found out that they only hire ARCs for offices that deliver Amazon year-round. It would not benefit me to hire ARCs and only be able to utilize them for four or six Sundays out of the year.

[122] Q. In all of your discussions with HR, with Labor Relations about possible accommodations, was it ever discussed whether Gerald himself would be permitted to reach out to others to find swaps?

A. He did do that. He actually -- in 2017 when Justin and Sheila were there, he kind of caught me by surprise, he went to them first, asking them to cover his Sunday shifts.

Q. So I appreciate your telling me that, but that wasn't the question that I asked. To begin with, at any time did you have a discussion with Labor Relations or HR or anyone that you could tell Mr. Groff that he would be permitted to look for his own substitutes?

A. I don't recall ever having that conversation.

Q. Because, if I understood your earlier testimony, Lyle Gaines instructed you that it was your work to see if you could find coverage voluntarily on a Sunday; correct?

A. Correct.

Q. And I don't think I asked you, did you do that consistently week in and week out?

A. Correct. I submitted all the e-mails of solicitation for volunteers with every discipline packet that was issued by me, not Diane's.

[123] Q. So you would represent today that you were faithful in carrying out your duty to try to find a substitute each week?

A. Yes.

Q. And what is it that you would do to try to find a substitute? Would you send an e-mail to the Postmaster?

A. The first -- after June 18th, when I got that e-mail back from Lyle, the first week I attempted to call all the offices who had unscheduled RCAs, but that was very time consuming and some of them didn't get back to me.

So it was either the first two weeks I did that -- it might have been two weeks, but after that point I e-mailed all the offices. I had a form e-mail that I would use saying we have -- it's in the e-mails, the form I used -- I have an employee that requested religious accommodation, would your sub, John Smith, who's not scheduled this week, be willing to volunteer for him.

Q. Do you have any personal knowledge as to whether those unscheduled subs were always asked?

A. I would assume, yes, because some days -- it's not like the Postmaster responded back within 30 minutes saying no. Sometimes I'd have to send a second or third e-mail to follow up until they would make [124] contact and verify with that RCA if they were willing to cover.

I know Helen Lamm, who works in Gordonville, stated that, you know, do we have to do this every week 'cause my carriers it's always going to be a no, they're not going to cover for him. I guess she was a little annoyed by getting the e-mails every week, but I

said, no, this is the process that's been set, and I have to follow through with this every week that he's been -

-

Q. Now, when I was asking about hardships, I think you mentioned the fact that you had to do this. So the process that you're describing here of sending out these e-mails, did you consider that to be a hardship?

A. I wouldn't call it a hardship, but it was additional responsibility that other Postmasters didn't have to follow through with. So it was an accommodation. We are going above and beyond what the normal standard was to try to accommodate Gerald.

Q. Did you ever tell Gerald that he was permitted to reach out to other RCAs to seek coverage for Sundays?

A. I did not. And part of the reason was because the issue in early -- or late 2017 before peak season when Gerald went to Sheila and Justin behind my back, didn't come to me first, he went to them, [125] soliciting them to cover his shifts.

At that point in time, Sheila Moyer was still under probation. And I felt it wasn't fair for him -- maybe she felt that she had to say yes to pass her probationary period. So I thought he should have come to me first before he started scheduling people to cover his shifts.

Because both -- Justin was just off of probation and Sheila was still on probation so, technically, I don't think it was in his responsibility at that point in time to not come to me first and ask if he could schedule people. If he'd have talked to me first, I'd have probably been more than open with it, but in the case

of Sheila, I would have liked to be the one to ask her due to her nature of being on probation still.

Q. So, clearly, Mr. Groff demonstrated a willingness to take initiative to try to find coverage?

A. (No response.)

Q. Can you respond to my question?

A. I'm not sure that you asked a question.

Q. Well, isn't it true that Mr. Groff took the initiative in 2017 to try to find those who would be willing to cover his Sundays?

A. He did. As I stated, though, I think proper etiquette would have been to come to his manager [126] first before he begins to solicit and not fully understand all the ramifications of the employees and their statuses.

Q. So when you got the instruction from Lyle Gaines in June of 2018, Gerald Groff's need for coverage on Sunday was communicated from you mostly by e-mail to other Postmasters and then from those Postmasters to any unscheduled RCAs in their office -- one, two -- three steps removed from Mr. Groff. Is that a fair way to describe it?

A. I e-mailed the Postmasters, and they would talk to their employees and ask if they would be willing to volunteer.

Q. But Mr. Groff was never told that he had permission to talk to other RCAs in other offices and ask them if they would be willing to swap?

A. He was never told that, but I don't see why it would have been an issue if he wanted to try to find somebody if he did it in the proper channels.

Q. What do you mean by proper channels?

A. Notifying the Postmasters -- the manager first before going directly to the other -- so the managers would know what's going on because they're the ones who manage the employees and set the schedules.

Q. When you would e-mail to the other [127] Postmasters, would you, whether by e-mail or otherwise, did you explain to them why Mr. Groff needed coverage on Sundays?

MS. FINKELSTEIN: Objection. Go ahead.

THE WITNESS: Like I stated before, the e-mail -- it's in the documents if you'd like to review it -- it stated something to the effect that I have an employee who has a religious accommodation not to work on Sundays, I'm soliciting volunteers to cover his shift. It was two or three sentences, very simple. It did not identify him. It didn't identify the exact nature of the accommodation because that's, again, a personal matter and not for every other office to know and be talking about.

BY MR. REINACH:

Q. But you did explain to the Postmasters that it was a need for a religious accommodation?

A. Correct.

Q. Do you have any knowledge whether the Postmasters communicated to their RCAs that there was someone who needed a religious accommodation and that's why they were seeking coverage?

A. I can't answer that question. I don't know how they posed the question to me, but it was stated in the e-mail that I sent to the Postmasters.

Q. On the three Sundays you said you

[152] page that's been Bate marked USPS 1966. This is an e-mail that you sent dated February 8. Do you see that?

A. February 8, 2018. Yes.

Q. And Keith Krempa was still your direct report; you reported to him?

A. Correct. He was the one I wrote it to.

Q. Manager of Operations?

A. Post Office Operations.

Q. And Laurie McKinsey was in Labor Relations?

A. Correct, at that time.

Q. And Barb Kirchner you said was in HR?

A. She was the Manager of HR.

Q. And you asked permission here to proceed with additional discipline for Mr. Groff; right?

A. Correct. This is the time period where, again, from the e-mails from Jessica that we previously discussed, there was questions being raised, are we handling this case in the correct and proper manner, and that's why I reached out to Keith.

And I think this begins that period where Gerald submitted his first reasonable accommodation -- written religious accommodation request, and I think -- I'm just doing this from recollection -- that had not been responded to, so I wanted to make sure that that was [153] addressed before we pursued any more discipline.

Q. Now, if you would turn to 1984, this is another e-mail you sent the following day to Mr. Krempa. If the attachment was provided, it was provided in a file

separate from the e-mail. So I'm not sure if we have it or not, but we certainly do have the 14-Day somewhere.

A. Well, this is the -- I sent it to him electronically to sign off on it, and then he sent it back to me signed the 11th. The 14-Day that we have here is the document in question. I sent it to him electronically, I believe.

Q. Well, the one that's an exhibit is from the fall of 2018. This is in February of 2018.

A. Okay. So this is the -- this is the 14-Day that was never issued, I believe.

Q. Correct.

A. All right. I'm following you.

Q. So for starters, this is about three weeks after Mr. Groff received his 7-Day Suspension on January 16th and signed for it, and there's a 14-Day that has been drafted that you're sending to Keith Krempa. Do you see that?

A. (Witness reviewed document.)

Q. It's not one of those exhibits.

A. Okay. I'm just trying to confirm the [154] timeline.

Q. Well, if you would -- it might help you -- turn to 2014, 2-0-1-4.

A. (Witness complies.)

Q. Do you see what 2014 is?

A. Yes.

Q. That's your signature there to the right of your printed name?

A. I'm not seeing anything -- oh, yes, there it is. Yep.

Q. This was a proposal for discipline that you submitted dated February 12, 2018. Do you see that?

A. Yes.

Q. It was also signed by Mr. Krempa?

A. Correct, his signature is there.

Q. And the Action Proposed, checked box below is 14-Day Suspension.

A. Correct.

Q. So this is February 12th, and then before you submitted that, the next page, USPS 2026, this is a PDI that you conducted with Mr. Groff. Isn't that correct?

A. Yep, this is the PDI that we held.

Q. Now, prior to doing the PDI, did you have any discussion with anyone about having the PDI?

[155] A. I can't recall if I had a conversation with anyone.

Q. Was there some particular reason why you were proceeding so quickly with discipline for Mr. Groff?

A. I don't think that I was proceeding quickly. Basically, the pattern has been every three refused absences was followed up with a PDI when I started to do the PDIs.

If you look at Document No. 2, Diane Evans issued the first Letter of Warning after three unscheduled absences or refusals to work by Gerald, and I kind of followed that pattern. After he refused to work three consecutive Sundays, I would issue -- do the PDI.

Q. Did they have to be consecutive Sundays?

A. Not consecutive. Three Sundays that he was scheduled to work.

Q. I understand. Earlier you talked about a teleconference call that you were on when the Amazon contract first began. And there was emphasis placed on making sure that people worked on Sundays or they were subject to discipline. Is that right?

A. Correct.

Q. Was there some particular concern about whether employees would be willing to cover Sundays and fulfill the obligations under the Amazon contract?

[156] A. I can't answer why Lancaster would -- what their impetus behind the stressing discipline or noting that this thing would be issued if people didn't follow. That was their teleconference. They hosted it.

I was just listening in. So I can't answer for what their reason was, and I don't want to speculate.

Q. You know, as much as California is seen by those in the East as kind of this, you know, solid blue state, we actually have a Bible Belt in California in the Central Valley. And it strikes me that here in Pennsylvania, Lancaster County is -- at least as an outsider, looks like it's something like a Bible Belt. I mean, it's certainly well known as Amish country, and I would expect that just besides the Amish, there are a lot of Churches and a lot of Christian people here in this part of Pennsylvania who might be reluctant to have to deliver packages for Amazon on Sundays.

My question to you is, did you ever have any discussion with anyone in management about the potential problems of implementing Sunday delivery here in this locale?

MS. FINKELSTEIN: I'm going to object to the long statement, which is not facts in evidence, which is your opinion. If you can answer the question that was actually a question, feel free to answer that question. [157] Did you discuss with management any concerns about Amazon Sunday?

THE WITNESS: Just going off record, I may have e-mailed Doug French about my concerns of possibly -- I think I did e-mail Doug French concerns that, you know, Gerald had stated he would resign if he was forced to work Sundays. You're going to be here all week?

BY MR. REINACH:

Q. I am.

A. We just got to fix one thing real quick. Lancaster. Say it with me.

Q. Lancaster.

A. Lancaster. Thank you.

Q. Thank you. So there is a city in Southern California that is spelled the same. I had reverted to the California pronunciation, but I actually did know better. It was just buried in my long-term memory, but I appreciate the correction, sir.

You testified earlier about some other RCAs that you knew had quit rather than have to deliver on Sundays; right?

A. I'm just going off what their Postmasters had told me, that they resigned. I didn't know them personally or interact with them.

Q. So you at least had some discussion with [158] other Postmasters that they had lost people who did not want to work on Sundays?

A. Yes.

Q. So the issue of people not wanting to work on Sundays was far beyond Mr. Groff?

A. Correct. You have to understand that, you know, since the inception of the RCA position, they've never worked on Sundays. So this was a total change and, you know, I think that's probably why Lancaster included the mention of discipline because they knew there was going to be some backlash.

Q. So the fact that there was some morale issues or resentment wasn't just because Mr. Groff didn't work on Sundays; people didn't like having to work on Sundays period. Isn't that fair?

A. No, 'cause we're talking about the beginning implementation of Amazon. And I never discussed Gerald's preferences with anyone outside of the Holtwood Post Office, so no one else knew Gerald's intent to refuse to work on Sundays.

Q. But I think that was my point. There was plenty of resentment among the RCAs about having to work on Sundays completely apart from Mr. Groff's situation.

MS. FINKELSTEIN: Objection. If you know what the RCAs resented.

[159] BY MR. REINACH:

Q. I think you've already testified that not having worked on Sundays for so long, the postal management expected there would be some backlash about now having to require them to work Sundays.

A. Correct, but at the onset, I just want to clarify, it wasn't because of Gerald's refusal to work. It was

just people aren't used to change, and when it happens, you know, it can be hard.

Q. And it wasn't just change, but you have people who did, like yourself, want to go to church on Sundays and didn't want to be out delivering Amazon packages on Sundays.

MS. FINKELSTEIN: Objection. You can answer.

THE WITNESS: True.

(Short recess was taken.)

BY MR. REINACH:

Q. Mr. Hess, what kind of employee was Mr. Groff? Putting aside the Sunday issue, what can you tell me about, as a manager, your assessment of him as an RCA?

A. He was a good employee, efficient at what he does.

Q. What about his attitude generally? Did he have a positive attitude about his work?

* * *

[200] Sundays on his account?

A. Again, I'd have to look at the attendance records. Those records were kept. I can't recall off the top of my head.

Q. Is it your understanding that at whatever point after this 14-Day was issued, that he accumulated three more unscheduled -- well, unscheduled absences is what it's referred to here -- that he would be subject to removal?

A. We would begin the disciplinary process. I can't say it would be removal. That would be in regards to

consulting HR and Human Resources because removal would be a totally different type of discipline.

Again, I've never experienced it, but I'm sure there'd be more consultation and it wouldn't just be arbitrarily administered.

Q. Now, if you compare, if you would, Exhibits 3 and 4, the 7-Day and the 14-Day, I note that on the 14-Day it omits the references to the sections of the Employee and Labor Relations Manual that are referenced on the 7-Day. Do you see that?

A. (Witness reviewed document.)

Yes.

Q. Now, I know that you were not the one who prepared this, but do you know why those references to [201] the ELM were omitted?

A. I do not, but the only thing that I can say for the record is the Letter of Warning -- I don't know who wrote that in Labor Relations -- the 7-Day was written by Jessica Gabriel, and the 14-Day, I believe, was written by Michele Maloy. So they're all written by three different individuals who probably have their own unique style on how they write discipline.

MR. REINACH: Thank you. That's helpful. Let's take a short break and see if we have anything further. We may be done.

MS. FINKELSTEIN: I think you're past seven hours.

MR. REINACH: There's no way I'm past seven hours with breaks.

MR. CROSSETT: Well, let's see if we have any more.

MS. FINKELSTEIN: Well, you were 15 minutes late in the morning and 15 minutes late coming back from lunch, that's half an hour, and it's now 5:45.

MR. REINACH: We've had other breaks today. We can have the Court Reporter check the --

MR. CROSSETT: Let's just go another minute or two and then there's nothing else.

MS. FINKELSTEIN: Well, I may have some [202] follow-up questions.

MR. REINACH: You're not on my seven-hour clock.

MS. FINKELSTEIN: Correct.

(Short recess was taken.)

MR. REINACH: Your witness. We're good.

BY MS. FINKELSTEIN:

Q. I just have a very few limited number of topics I wanted to raise with you. The first is, did you ever make any negative comments to Mr. Groff because of his religion?

A. No.

Q. Did you have any dislike for Mr. Groff because of his religion?

A. No.

Q. Did you ever harass Mr. Groff because of his religion?

A. No.

Q. Did you ever retaliate or treat Mr. Groff worse because of his religion as compared to how you treated other employees?

A. No.

Q. Did you ever treat Mr. Groff differently in any way that was detrimental to him because of his religion?

[203] A. No.

Q. Even after Mr. Groff filed his EEOC complaints, did you still continue to treat him the same way?

A. Yes.

Q. So I want to switch gears and ask you about how a Rural Carrier Associate might become a full-time Career Carrier. How many full-time Career Carriers are there in the Holtwood office?

A. Three.

Q. Was that the same as the number of full-time Career Carriers when Mr. Groff was a Rural Carrier Associate in that office?

A. Yes.

Q. In order for a Rural Carrier Associate to become a full-time Career Carrier, what has to happen first?

A. A full-time vacancy needs to become open in the office.

Q. So does that mean one of the full-time Career Carriers in Holtwood would need to leave before a Rural Carrier Associate like Mr. Groff could apply for one of those full-time Career Carrier positions?

A. That's correct.

Q. Were there three full-time Career

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Exhibit "J"

[1] IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NO. 19-CV-1879

GERALD E. GROFF,

Plaintiff

vs.

MEGAN J. BRENNAN, POSTMASTER GENERAL,
UNITED STATES POSTAL SERVICE,

Defendant

DEPONENT: DOUGLAS C. FRENCH

DATE AND TIME:

Wednesday, December 18, 2019
at 11:20 a.m.

LOCATION: Clymer, Musser & Sarno, P.C.
408 West Chestnut Street Lancaster, PA 17603

BERKS COURT REPORTING SERVICE

By: Lori A. Dilks

Certified Court Reporter

10 Fox Glen Drive

Sinking Spring, Pennsylvania 19608

(610) 678-9984

berkscourtreporting@gmail.com

* * *

[20] other ground rules -- I'm terrible about getting out all the ground rules.

MS. DeBRUICKER: Had you finished your question yet?

MR. REINACH: We can't record nods. We can only record verbal responses.

MS. DeBRUICKER: To be clear, he's not answering you until you've finished your question.

MR. REINACH: I will finish my question.

MS. DeBRUICKER: He can nod all he wants while you're asking your question.

BY MR. REINACH:

Q. Between 2015 and the time that Lancaster became a hub for the outlying post offices, were there challenges in getting enough carriers to deliver on Sundays?

A. I don't recall.

Q. Were you doing the scheduling during that time?

A. No.

Q. So you took over the scheduling when the hub began?

A. Around that time, yes.

Q. Now, between March and June of 2017, when you were doing the scheduling and before you left [21] Lancaster, do you know whether Mr. Groff ever worked on Sundays?

A. I don't recall.

Q. Do you know whether he failed to work scheduled Sundays?

A. Yes.

Q. And were you consulted about what to do about the fact that he failed to work scheduled Sundays?

A. I don't understand what you mean by consulted.

Q. Well, did you have any conversation with anyone about what action, if any, to take on account of the fact that Mr. Groff failed to work when scheduled on a Sunday?

MS. DeBRUICKER: Objection to form.

THE WITNESS: I'm still not understanding what you're asking.

BY MR. REINACH:

Q. Let me ask something different. We'll lead up to that. Was there any discussion at the management level about the need to be diligent in disciplining those who don't show up to work as scheduled on Sundays?

A. According to our ELM, which is Employee Labor Manual, employees are required to be regular in [22] attendance.

Q. Right, but that's not what my question is. My question is, at the time that Lancaster became a hub for Amazon delivery in 2017, was there any discussion among management about the importance of disciplining those who did not work scheduled Sundays?

A. We would just notify Postmasters or Acting Postmasters of any offices of any employees that did not report to work on Sundays.

Q. That doesn't really answer my question, though, because what I'm asking is whether there was discussion specifically about the need to discipline those who did not work scheduled Sundays.

A. I don't recall any specific discussion about you must discipline this person for not reporting to work. I, as a Postmaster, cannot speak to -- I mean, I can have conversation, but I'm not the one doing any disciplining. So I can't instruct you as my supervisor, you must discipline this employee. Again, that is against the Employee Labor Relations Manual, the ELM.

Q. So you're saying that, as Postmaster at Lancaster, disciplining carriers was not one of your responsibilities?

A. No.

Q. Whose responsibility was that?

[23] A. Individual supervisors.

Q. When you were at Lancaster when the Rural Carriers, the RCAs, were mandated to work on Sundays, do you know if any of them quit?

A. I don't know that that was a specific reason.

Q. Do you know, did anyone ever tell you that they were quitting because they didn't want to work on Sunday because they wanted to be in Church or for religious reasons?

A. No.

Q. Did anyone say anything to you about any concern or upset or complaint about Mr. Groff not working on Sundays?

A. To me specifically? No, I don't recall.

Q. Did anyone tell you that they had heard complaints about Mr. Groff not working on Sundays?

A. Yes.

Q. So who do you recall telling you that?

A. I don't know specific names.

Q. Was it a Postmaster or, you know, a supervisor?

A. No. It was the aura in the building that you would just hear comments.

Q. So you heard comments from somebody there

* * *

[28] the Sundays off; right?

A. Yes.

Q. And they would have, presumably, some days off during the week?

A. I can't answer that. They didn't work for me during the week.

Q. Okay. But RCAs might be entitled to a day off at some point, but not necessarily the same day off every week; right?

A. Possibly.

Q. Do you have any familiarity with religious practice of observing a day of the week as a day of rest and worship?

A. Repeat that question again.

(Whereupon, the Reporter read back the referred-to testimony.)

THE WITNESS: Specific religion, no.

BY MR. REINACH:

Q. Have you ever had any friends or relatives who observe a particular day as a day of worship, a day of rest?

A. I have a wife that goes to Church on Sundays from 10 a.m. till 11 a.m.

Q. Do you know anyone who takes the whole day as a day of rest?

[29] A. No, I don't.

Q. When Aaron told you that this had been offered to Mr. Groff, did he tell you what Mr. Groff's response was?

A. I don't recall.

Q. Did you consider whether that was a reasonable offer?

A. I don't recall.

Q. As we're sitting here today, does it make sense to you that somebody would be willing to change the day of worship from one day to another when asked by the Postal Service?

MS. DeBRUICKER: Objection. You can answer.

THE WITNESS: I'm not sure what you're asking.

BY MR. REINACH:

Q. Well, I'll withdraw the question. Let's return to the subject of discipline. Was it your understanding that carriers were obligated to work their scheduled Sundays or face discipline?

MS. DeBRUICKER: Objection to the form. What kind of carriers?

THE WITNESS: Again, I will reiterate we followed the ELM, employees that are scheduled and required to be regular in attendance.

[30] BY MR. REINACH:

Q. How many days would an employee have to miss to warrant discipline in your understanding? Is there a particular rule about that?

A. No.

MS. DeBRUICKER: Objection to form.

THE WITNESS: Sorry.

MS. DeBRUICKER: That's okay.

BY MR. REINACH:

Q. Were you aware of whether any employees within the scope of the Lancaster hub were disciplined for missing a single Sunday?

MS. DeBRUICKER: Objection. Are we speaking of all employees, all crafts?

MR. REINACH: Specific to carriers, both City and Rural Route Carriers.

MS. DeBRUICKER: Full-time?

MR. REINACH: Let's narrow it to CCAs and RCAs.

MS. DeBRUICKER: Thank you.

BY MR. REINACH:

Q. Do you understand the question?

MS. DeBRUICKER: Why don't we -- I'll ask that you ask the question again because I've lost track.

BY MR. REINACH:

[31] Q. So if you know, were any RCAs disciplined for missing a single scheduled Sunday?

A. I do not recall of anyone for a single day.

Q. Between March, when hub operations began for Amazon Sundays, and the time you left Lancaster,

were you aware whether Mr. Groff's not working on Sundays had an impact on the ability of the Postal Service to get the packages delivered?

A. I can tell you it came to a point that we had to end up scheduling an additional employee every week when it came to the point that Mr. Groff was not going to come to work; therefore, that impacted us having to schedule additional employees in planning that we may end up having to split that route.

Q. And because of good management, you did get the packages delivered; right?

MS. DeBRUICKER: Objection to form.

THE WITNESS: We're the U.S. Postal Service. We deliver the mail. That's our job.

BY MR. REINACH:

Q. And you fulfilled those obligations to deliver the Amazon packages on Sundays, did you not?

A. To whatever extent possible, yes.

Q. So in looking at your Affidavit again,

* * *

[44] A. No.

Q. The number of people that you needed to deliver on Sundays, was that a static number or did it change from week to week?

A. It would vary -- well, let me -- when we first started the hub, there was two different types of operations that you could do for Amazon delivery. When we first started, there was a dynamic, which -- a dynamic routing which depended upon the number of routes -- I mean number of packages that we had, it would make the number of routes.

So in the early going, when we were in the testing phase of this, we were unable to control how many routes we would have on a given Sunday and, therefore, we ended up in the beginning having to schedule everyone 'cause we didn't know.

We were then able to go to what we call static dynamic routing where we were able to establish we are going to have -- I'm just going to use this number because I don't recall how many we had at that time -- I could have 20 routes. I would make 20 rural routes every Sunday. We were able to control that, and that would also allow us to -- more able to control the number of people that we had to schedule on our staffing.

Q. So I think I understand what you're [45] telling me, but I want to make sure. The dynamic system, that was kind of like computer generated?

A. Yes.

Q. And so the computer would generate based on so many packages we got, we're going to divide them up into X number of routes. Is that --

A. Yes.

Q. -- a good description?

A. Yes.

Q. And you were unsatisfied with that because it didn't give you enough control over how you were doing the routes?

A. Very difficult to manage.

Q. And did you feel that, as the manager in the actual territory, you had a much better grasp of what would constitute a manageable route and how to

divide up the packages on a given Sunday than just the computer-generated system?

A. We were able to gain historical data off of the average number of routes that we would have on any given Sunday to come up with what was a good number for the number of routes that we had so that, again, we could schedule accordingly. But when you do a static, the thing that you also get involved with is a dynamic route may put the line at 80 packages for a route. When you go [46] static, you could have made a route that has 120 packages because it won't -- there's no threshold when you do static.

So we always had to keep in mind that our staffing -- it was something that we looked at constantly. If we needed to add additional routes as the Amazon packages continued to grow and grow, we had to add more routes.

Q. Okay. So back to the subject of leave requests, though. If someone submitted a leave request saying that they needed to attend, say, a wedding, you know, would you give that any special consideration even if you felt like you needed that person?

A. I don't recall any specifics on any reasoning why someone wanted off. Again, when the slips were sent to me, if I had 20 available carriers and I had 20 routes, I'm scheduling all 20 carriers.

MR. REINACH: I think that's all I have for now. Do you have some?

BY MS. DeBRUICKER:

Q. Briefly. We're here about Mr. Groff's request for relief from Sunday work. Do you recall getting any guidance from Human Resources as to how to

accommodate that kind of request or how to handle that kind of request?

A. Yes.

[47] Q. What was that?

A. If I recall -- again, Aaron could probably speak more specifically on that than I did 'cause as -- him being the manager, he had more hands-on. I just -- I know that he did contact Labor Relations.

Q. Did any of that guidance go to you, or was it to Aaron?

A. I don't recall.

Q. How about from Human Resources?

A. The only thing we went through with Human Resources is establishing the scheduling for the MOU.

Q. There was a discussion about providing Mr. Groff a different day of the week to have off rather than Sundays. To your knowledge, is it easier to find people to cover days that are not Sundays?

A. Absolutely.

Q. Did you know anything about Mr. Groff's religion prior to his filing of his EEO?

A. No.

Q. Do you have any negative feelings about Mr. Groff's religion?

A. No.

Q. Did you discriminate against Mr. Groff?

A. No.

[48] MR. REINACH: Objection. It calls for a legal conclusion.

BY MS. DeBRUICKER:

Q. Did you retaliate against Mr. Groff?

A. No.

MR. REINACH: Same objection.

BY MS. DeBRUICKER:

Q. Did you treat Mr. Groff any worse once you learned of his religion?

A. No.

Q. Did you treat Mr. Groff any worse after he filed his EEO claim?

A. No.

Q. Did you treat Mr. Groff any worse once he asked for an accommodation based on his religion?

A. No.

MS. DeBRUICKER: I have no other questions.

(Whereupon, the deposition concluded at 12:35 o'clock p.m.)

[49] CERTIFICATE

I, Lori A. Dilks, the officer before whom the deposition of DOUGLAS C. FRENCH was taken, do hereby certify that DOUGLAS C. FRENCH, the witness whose testimony appears in the foregoing deposition, was duly sworn by me on December 18, 2019, and that the transcribed deposition of said witness is a true record of the testimony given by him; that the proceedings are herein recorded fully and accurately to the best of my ability; that I am neither attorney nor counsel for, nor related to any of the parties to the action in which this deposition was taken; and, further, that I am not a relative of any

attorney or counsel employed by the parties hereto or financially interested in this action.

Lori Dilks

Lori A. Dilks

PA Court Reporter

Notary Public in and for the Commonwealth of
Pennsylvania

My Commission expires November 29, 2023

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Exhibit "K"

[LOGO]

**NATIONAL RURAL LETTER
CARRIERS' ASSOCIATION**

Chrissy Miller, Assistant District Representative,
P.O. Box 3069 York, PA 17402
PHONE: (717) 586-3827 FAX: (717) 202-0167

STEP 2 GRIEVANCE APPEAL

Certified #: 70153010000028770472
Return Receipt Requested

July 31, 2017

Manager of Human Resources
Central Pennsylvania - 170 District, USPS
1425 Crooked Hill Road
Harrisburg, PA 17107-9994

GRIEVANT: Vince Mcfadden

NRLCA CASE #: 170-026640C15.EAS

POST OFFICE: Lancaster-17601

Issue: Scheduling

Violation: Article 15.1, Article 19.1, Article 5, Article 30.2.P, Step 4 H91R-4H-D 95031977, Memorandum Opinion For The Vice President And General Counsel United States Postal Service, Elm 518.1, Mou-Sunday/Holiday Parcel Delivery Work List, Arbitration Award Usps Case No. G10C-4C-D 12260866

Remedy: Follow The Mou Sunday/Holiday Parcel Delivery Work List Effective 5/24/2016 Immediately. Make All Relief Carriers Work According To The Guidelines In The Mou. Make All Relief Carriers Whole For All Lost Wages And Benefits. Compensate

Each Relief Carrier \$50.00 Every Sunday That They Work And Other Relief Carriers Are Not Being Forced To Work According To The Guidelines Of The Mou.

This will serve as notice to appeal the above named grievance to Step 2 of the grievance-arbitration procedure.

Article 15.3 of the USPS-NRLCA National Collective Bargaining Agreement states that the Employer's Step 2 Representative will meet with the District Representative or designee within ten days of receipt of the enclosed Step 2 appeal.

Please contact the Step 2 Representative listed below to set a meeting date.

NRLCA STEP 2 REPRESENTATIVE

Barbara M. Callahan
PO Box 392
Lititz, PA 17543
(717) 626-6329

Respectfully,

/s/ Chrissy Miller

Chrissy Miller
Assistant District Representative, NRLCA

CC: Vince Mcfadden
Christina M. Miller, Assistant District Representative
Installation Head
File

UNITED STATES POSTAL SERVICE[®] Document 36-2 Filed 02/14/20 Page 331 of 356
USPS-NRLCA Joint Step 1 Grievance Form

1a. Grievant's Name (Last, first, middle initial) McFadden Vince		1b. Grievant's EIN/Employee Id Number	
1c. Grievant's Title, Designation Code, and Route No. RCA		1d. Telephone No. (include area code)	
1e. Grievant's Mailing Address Wernersville PA 19585			
2a. Post Office Lancaster	2b. Branch/Station	2c. Telephone No. (include area code) 610 914 2244	
3a. Date of Incident 6-3-17	3b. Date of Step 1 Discussion with (Filing date) DE 6/5/17	3c. Was Grievance Timely? (Explain) YES	
4. Issue (Complaint) Has management violated the National Agreement by forcing me to work on Sunday's, allowing others to be not work.			
5. Contract Provisions (Articles at issue) SEE ATTACHED PAGES ① ②			
6. Full, Detailed Statement of Undisputed Facts (Attachments, as necessary) SEE ATTACHED PAGES ① ②			
7. Management's Full, Detailed Statement of Disputed Facts (Attachments, as necessary) See ATTACHED PAGE 7			
8. Management Contentions See ATTACHED PAGE 7			
9. Union's Full, Detailed Statement of Disputed Facts (Attachments, as necessary) SEE ATTACHED PAGES ① ② ③ ④ ⑤ ⑥			
10. Union Contentions SEE ATTACHED PAGES ① ② ③ ④ ⑤ ⑥			
11. Remedy Sought by the Union SEE ATTACHED PAGES 5 ⑥			
12a. Disposition (Check one) <input type="checkbox"/> Settled <input checked="" type="checkbox"/> Denied <input type="checkbox"/> Withdrawn <input type="checkbox"/> Sustained <input type="checkbox"/> Other (Specify)		12b. Date of Disposition 7-31-2017	
13. Signature of Installation Head of Designee and Telephone No. 717 344-1032		14. Signature of Union Step 1 Official and Telephone No. Chick Miller 717-586-3827	

USPS-NRLCA Joint Step 1 Grievance Form

Grievant: Vince Mcfadden

5: Contract Provisions

Article 15.1, Article 19.1, Article 5, Article 30.2.P, Step 4 H91R-4H-D 95031977, Memorandum Opinion for The Vice President and General Counsel United States Postal Service, Elm 518.1, MOU-Sunday/Holiday Parcel Delivery Work List, Arbitration award USPS Case No. G10C-4C-D 12260866

6: Full, Detailed Statement of Undisputed Facts

1. Gerald Groff is an RCA out of the Holtwood Post office.

2. Gerald Groff started working for the USPS on July 14, 2012.

3. Lancaster is the Hub for Amazon Sunday/Holiday delivery.

4. There are currently 2 ARC's assigned to the Lancaster Hub.

5. There are 3 volunteers for Amazon Sunday/Holiday's.

6. Lancaster management allows RCA's to come to work on Sundays after their religious services if requested.

7. Lancaster is not following the guidelines in the MOU for Sunday Amazon by not working Gerald Groff on Sundays.

8. The Sunday/Holiday Parcel Delivery assignment list consists of spoke offices and nearby rural offices. This agreement was signed on June 3, 2016 by NRLCA Designee, Barbara Callahan and USPS Designee, Barbara Kirchner.

9. The nearby Rural offices are Gap, Quarryville, Holtwood, Christiana, Conestoga, Gordonville, Kirkwood, Narvon and Peach Bottom.

10. Ronks, Smoketown and Bainbridge have all been removed from the Lancaster hub and have been added to the Lititz hub effective July 16, 2017.

11. The Spoke offices are Elizabethtown, Columbia, Landisville, Marietta, Millersville, Mount Joy, Strasburg, Mountville and Willow Street.

12. All Postmasters are forcing their RCA's to work on Sundays/Holidays except for the Postmaster of Holtwood.

13. This grievance was mutually agreed upon an extension and this grievance is timely.

14. Lancaster Post Office schedules between 12-15 RCA's a week on Sundays from the list by alphabetical order.

15. Gerald Groff is scheduled accordingly to the MOU guidelines for Sunday/Holiday Parcel Delivery Work List for Sunday Amazon and refuses to work Sundays.

16. OIC, Brian Hess states that Gerald Groff informs him that he is not working due to his religious beliefs every time he is scheduled.

17. Gerald Groff never worked a Sunday ever in his career at the Postal Service.

18. The guidelines for the MOU signed on June 3, 2016 were implemented on March 19, 2017 with the schedule rotating in alphabetical order and nearby offices being utilized.

19. On April 23, 2017, Lititz was separated and became a separate hub.

20. Manheim, New Holland and Ephrata are offices that are now part of Lititz Hub.

21. According to the July 2, 2017 data base, there are a total of 40 relief carriers. 37 are non-volunteers.

22. Gerald Groff was scheduled to work on (3-19-2017) - (4-2-2017) - (4-16-2017) - (4-23-2017) - (5-7-2017) - (5-21-2017) - (5-29-2017) - (6-11-2017) - (7-2-2017) - (7-23-2017) however, never showed up for work as scheduled.

23. Management has made exceptions to the following carriers (Tina Kylar - Christiana Post Office), (Rita Venuto - Ronks Post office), (Michelle Beattie - Peach Bottom) allowing them to come to work on Sundays after their religious services.

9: Union's Full, Disputed Detailed Statement of Disputed Facts

10: Union Contentions

Management violated Article 15.1 by failing to resolve the issue at the initial discussion level when made aware of the violation.

Management violated Article 19.1 is cited to incorporate all handbooks and manuals listed in Section 5 of this grievance in addition to the specific arguments made by the Union in section 10 regarding the cited handbooks and manuals.

Management violated Article 5 when they took action affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the NRCLA which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

Article 30.2.P states that an office-wide list will be established for substitutes, rural carrier associates, and rural carrier relief employees who desire to work on Sunday. When there is a need to work leave replacements on Sunday, the Employer may require a part-time flexible rural carrier to work prior to selecting qualified employees from the list. The Employer will make every reasonable effort to avoid requiring substitutes, RCA's and RCR's not on the list to work. The Union contends that the Postal Service is a 24/7 operation. RCA's refusing to work Sundays could impact the operation of the Postal Service. Request for Religious Accommodations is not intended to be exempt of working Sundays. A religious accommodation is any adjustment to the work environment that will allow an employee to practice his or her religion. The need for religious accommodation may arise where an individual's religious beliefs, observances or practices conflict with a specific task or requirement of the position or an application process. Accommodation requests often relate to work schedules, dress and grooming, or religious expression in the workplace if it would not pose an undue hardship. The Postal Service can refuse to accommodate an individual's religious beliefs or practices if the Postal Service can demonstrate that the accommodation would cause an undue hardship. An accommodation may cause undue hardship if it is costly, compromises workplace safety, decreases workplace efficiency, infringes on the rights of other employees, or requires other employees to do more than their share of burdensome work. Undue hardship also may be shown if the request for an accommodation violates the terms of a collective bargaining agreement or job rights established through a seniority system. Allowing some rural carriers to be exempt from working Sundays violates the collective bargaining

agreement between the United States Postal Service and the National Rural Letter Carriers' Association. Allowing some Rural carriers to be exempt from Sunday work will require other employees to do more than their share of burdensome work. The Union contends that this is unfair and unjust to other employees and it is disparate treatment. While management states that the rural carriers that have religious accommodations will work on holidays. The Union contends that there are 10 holidays and 52 Sundays in a year. How is 10 days compared to 52 fair? This is not fair at all.

The Section of Title VII regulating employment by the Federal Government provides that "all personnel actions affecting employees or applicants for employment....in the United States Postal Service...shall be made free from any discrimination based on....religion." 42 U.S.C 2000e-16(a). Although this language does not plainly require accommodations of religious practice—as opposed to simply prohibiting affirmative "discrimination based on" such practice—Congress, as the Supreme Court has explained, has incorporated {such a requirement} into the statute, somewhat awkwardly, in the definition of religion. *Ansonia Bd. Of Educ. V. Philbrook*, 479 U.S. 60, 63 n. 1 (1986). That definition provides as follows: "The term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C 2000e(j). Title VII thus, through the interaction of these two sections, is understood to require federal employees in "all personnel actions" to reasonably accommodate to "and employee's religious practices, unless so accommodat-

ing would impose “undue hardship” See *Trans World Airlines, Inc. V. Hardison*, 432 U.S. 63, 75 (1977) (explaining that “the employer’s statutory obligation to make reasonable accommodation for the religious observances of its employees, short of incurring an undue hardship, is clear”). Any accommodation that would cause an employer to bare “more than a de minimis cost” imposes “undue hardship.” *Id.* At 84; see *Ansonia*, 479 U.S. at 67 (same). And the cost need not be economic. *Cloutier v Costco Wholesale Corp.*, 390 F. 3d 126, 134-35 (1st Cir. 2004).

Title VII does not require (or permit) the Postal service, in response to religious objections, to depart from the oath of office mandated by 39 U.S.C 1011, because for the Postal Service to violate a federal statute would impose “undue hardship” as a matter of law. Nothing in the relevant provisions of Title VII either expressly or implicitly provides for the disregard of a congressional mandate in the name of reasonably accommodation to religious practices: Section 2000e(j) contains to “notwithstanding any other law” language; nor does it otherwise suggest that it overrides other federal law, such as RFRA (Religious Freedom Restoration Act of 1993) does by expressly “applying to all Federal Law, “42 U.S.C. 2000bb-3(a). Cf. *TWA*, 432 U.S. at 79 (holding that, in absence of “a clear and express indication from Congress” contrary, it would cause undue hardship under section 2000e(j) for an employer to violate “an agreed-upon seniority system” in an “otherwise valid” collective-bargaining contract). Furthermore, as you have noted, see April USPS Letter at 2, the Postal Service, as a component of the Executive Branch of the Federal Government, has a background constitutional duty, derivative from the President’s to take care that the laws be faithfully executed. See U.S Const. art II, 3. The Postal Service

oath is and long has been among those laws and thus within that duty, and we see no basis in the text of Title VII for discerning any implicit intent to alter that oath's express obligation.

The presidential guidelines that we discuss more fully in our RFRA analysis in the next part take the same view. In addressing Title VII's requiring of reasonable accommodation, they recognize that undue hardship is imposed if the accommodation "would cause an actual cost to the agency or to other employees or an actual disruption of work, or....is otherwise barred by law." The White House, Office of the Press Secretary, Guidelines on Religious Exercise and Religious Expression in the Federal Workplace 1.C (Aug 14, 1997) ("Guidelines") (emphasis added). The Union contends that by allowing some rural carriers to be exempt from working Sundays, it causes other employees to work close to 52 Sundays a year while other employees work 10 holidays a year if they include Christmas and Thanksgiving. While the employees that are working sometimes 2 and 3 Sundays in a row causes and extra cost to the United States Postal Service because of the overtime. The Postal Service is overworking some employees and not enforcing all relief carriers to work on Sundays.

According to Step 4 H91R-4H-D 95031977 states that the new language in Article 30.2.P of the National Agreement now provides for Sunday work. It provides the establishment of an office-wide list for those substitutes, rural carrier associates and rural carrier relief employees who desire to work on Sundays. Regular rural carriers may not work on Sundays. The Union contends that this step 4 has been implemented since May 1, 1996 prior to some RCA's employment. Sunday work has been in our National Agreement

prior to Amazon Sunday parcel delivery. The Union contends that management should enforce all relief employees to work on Sundays and not choose who is allowed to be exempt. This is not fair to the whole Rural carrier craft for those relief employees sometimes working the holiday and two or three Sundays in a row.

The new Memorandum of Understanding between the USPS and the NRLCA, Sunday/Holiday Parcel Delivery Work List was signed and effective on May 24, 2016. The parties recognize the importance of successfully implementing the continued expansion of Sunday/holiday parcel delivery service, which began testing in October of 2013. The parties agree that rural carrier leave replacements will be assigned, as appropriate, to complete Sunday/holiday parcel deliveries. The MOU states that management will first utilize all ARC's assigned to the hub location or associated 'spoke' offices. Management at the hub location will then select leave replacements from the volunteer list on a rotating basis. If there is an insufficient number of leave replacements on the volunteer list, management will schedule leave replacements from the non-volunteer list, also on a rotating basis. These new guidelines are rules that management is not abiding in. The Union contends that management is not following the MOU. Management is allowing a rural carrier from Holtwood to be exempt from working Sundays and this is a major hardship on the other relief carriers. Management is disparate in their treatment among carriers, forcing all other RCA'S to work on Sundays but allowing one RCA to not work is ludicrous and not right.

All relief employees are all aware of the Postal Service rules that require employees to report to work as

scheduled and that they are to work Sundays according to the MOU that was signed on May 24, 2016. The Union contends that management has violated the National Agreement by allowing Mr. Groff to refuse to work on Sundays and this violation is interfering with operating requirements. This is an undue hardship on all other affected employees that come to work on Sundays.

The Union contends that Arbitrator Debra Simmons Neveu, Esq, upheld a removal for an employee was charged with violation of the Postal Service Standards of Conduct-AWOL. The award summary was the evidence is that management reasonably accommodated the grievant's religious beliefs and practices in accordance with Postal Service policy, but assigned the grievant to work on Saturdays when operating requirements made such assignments necessary. The evidence is that the grievant was informed that he was required to work on Saturdays when scheduled. The grievant repeatedly failed to report to work on Saturdays as scheduled. Management stated that the APWU believed that the grievant was singled out for his religious beliefs with regards to working Saturday. In this award, Management cited Arbitration Thomas Fritsch case #B98C4BD00072002 stating that the grievant did not report to work on some Sundays. In this case, it was undisputed that the grievant in this case refused to work on Sundays and was removed by the Postal Service. Also cited in this arbitration was Arbitrator James Odom Jr case # H00T-1 H-C 02181920 which was a claim of personal hardship with specific religious beliefs made by the grievant, the parties' labor agreement does not provide an arbitrator authority to extend relief on this basis. The Postal Service has long stood on the premises that if possible they would accommodate an employee's request to

work on Sundays. The Postal Service now finds themselves in need of the services of Mr. Groff to work on Sundays according to the MOU. Mr. Groff is not working Sundays so therefore this affects RCA's on the schedule. The Postal Service cited ELM 665.15 Obedience to Orders stating employees must obey the instructions of their supervisors. Management has given Mr. Groff instructions to work Sundays and has not worked one single Sunday ever. The Postal Service cited ELM 665.41 requirement of regular attendance which states failure to be regular in attendance may result in disciplinary action. Management is allowing an RCA to not be required to work on Sundays. Management is in violation of their own regulations.

11. Remedy Sought by the Union

Follow the MOU Sunday/Holiday Parcel Delivery Work List effective 5/24/2016 immediately. Make all relief carriers work according to the guidelines in the MOU. Make all relief carriers whole for all lost wages and benefits. Compensate each relief carrier \$50.00 every Sunday that they work and other relief carriers are not being forced to work according to the guidelines of the MOU.

7. Management's Full, Detailed Statement of Disputed Facts

Management disputes that Lancaster is not allowing Mr. Groff to be excused from working Sundays. Management conducted several PDI's with Mr. Groff. Mr. Groff received a letter of warning on June 9th of 2017.

8. Management Contentions

Management charged Mr. Groff with Unsatisfactory Attendance-Failure to be regular in Attendance for several dates that Mr. Groff did not show up for work. Management cited the MOU and ELM 511.43 stating that employees are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences. Management also cited ELM 665.41 stating that employees are required to be regular in attendance. Management contends that Lancaster has scheduled Mr. Groff to work on the Sunday schedule. Management has not favored him or allowed him to be exempt from working Sundays. Management has notified Brian Hess, Postmaster of Holtwood when Mr. Groff is scheduled to work. Lancaster management is not in charge of Mr. Hess and has no authority to force Mr. Hess to enforce Mr. Groff to report to work as scheduled. Management has not received anything in writing from Mr. Groff or Mr. Hess for any request for religious accommodations. Management is not in violation of their own regulations. Management has scheduled all relief employees to work in accordance with the MOU Sunday/Holiday Parcel Delivery Work List. Management is upholding the National Agreement.

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[LOGO]

**NATIONAL RURAL LETTER
CARRIERS' ASSOCIATION**

Barbara Callahan, District Representative, NRLCA,
P.O. Box 392, Lititz, PA 17543
PHONE: (717) 626-6329 FAX: (717) 202-0337

STEP 3 GRIEVANCE APPEAL

Certified #: 7006-2150-0002-6385-0221-
Return Receipt Requested

October 3, 2017

LR Appeals
U.S. Postal Service
P.O. Box 25398
Tampa, FL 33622-5398

NRLCA Case #: 170-026640C15.EAS

GATS #: C15R-4C-C 17580127

Grievant: Vince Mcfadden

Employee ID: [redacted]

PO and Zip: Lancaster, PA 17601

Finance #: [redacted]

District: Central Pennsylvania - 170

Issue: Scheduling

Violation: article 15.1, article 19.1, article 5, article 30.2.p, step 4 h91r-4h-d 95031977, memorandum opinion for the vice president and general counsel united states postal service, elm 518.1, mou-sunday/holiday parcel delivery work list, arbitration award usps case no. g10c-4c-d 12260866

To whom it may concern:

This letter is filed on behalf of Vince Mcfadden, a 78 - RCA, to appeal an adverse decision rendered at Step 2.

Please find enclosed a copy of the grievance which outlines the facts of the case and the corrective action requested.

We respectfully request that this important matter be discussed with Terry Miner, NRLCA Regional Representative, at your earliest opportunity.

Respectfully,

/s/ Barbara Callahan

Barbara Callahan

District Representative, NRLCA

CC: Terry Miner, NRLCA Regional Representative

Christina M. Miller, Assistant District Representative, NRLCA

Barbara M. Callahan District Representative, NRLCA

Vince Mcfadden, Grievant

Manager HR, Central Pennsylvania - 170 District, USPS

Bob Boban, USPS

File

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[LOGO]

**NATIONAL RURAL LETTER
CARRIERS' ASSOCIATION**

ADDITIONS AND CORRECTIONS ADVISORY

GATS #C15R-4C-C 17580127

DATE: October 3, 2017

NRLCA GRIEVANCE # 170-026640C15.EAS

ISSUE: Scheduling

GRIEVANT: Vince Mcfadden

POST OFFICE: Lancaster

US POSTAL SERVICE REPRESENTATIVE:
Bob Boban

Dear Sir/Madam:

I am submitting the following additions and corrections to the above referenced grievance file and respectfully request that the same be officially incorporated into the record.

They are as follows:

Attached are 9 interviews the Union received responses to after appealing this grievance to Step 2. Please incorporate these into the joint file.

Management failed to address the Union's argument in the Step 2 denial. The arguments raised by the Union were detailed in writing on the attachment to the 8191 at Step 1 and reiterated at Step 2 with the emphasis on the fact that management is being disparate in its treatment of the grievant by failing to make all assigned RCAs be regular in attendance for Sunday/Holiday Amazon. In essence, religious accommodation is being improperly granted to

another employee to the detriment of the operational needs and work load of other RCAs assigned to work the Sunday/Holiday Amazon schedule at the Lancaster Hub. The file is replete with documentation to support our arguments. The record shows the other employee is allowed to continue to refuse to report for work with no consequences other than one discipline and multiple pre-disciplinary interviews concerning his failure to report. To date he has never worked a Sunday Amazon date when scheduled.

continued page 2

Respectfully,

/s/ [Illegible]

District Representative

National Rural Letter Carriers' Association

cc: File

NRLCA / September 2016

Additions and Corrections Advisory

Page 2 — McFadden — scheduling/disparity

At Step 2, the Postal Service failed to address the merits of the case, instead concentrating on the requested remedy which included a monetary penalty for the repeat violation wherein the carrier has been made to work more frequently due to management failing to treat everyone the same with regard to attendance requirements. Management argued that Article 3 applies but has failed to recognize that the very first line in Article 3 states in part that management rights are “subject to the provisions of this Agreement and consistent with applicable laws and regulations.”

/s/ [Illegible]

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[LOGO]

UNITED STATES POSTAL SERVICE

Certified #7017 1070 0000 6443 6758

September 26, 2017

Barbara Callahan
PO Box 392
Lititz PA 17543

GATS #: C15R-4C-C 17580127
NRLCA #: 170-026640C15.EAS

Subject: **Step 2 Grievance Appeal Decision**

Dear Ms. Callahan,

This confirms the disposition of the above-captioned grievance appeal discussed with you. The time limits were mutually extended solely for the processing of this grievance at step 2. After careful review of the grievance file and consideration of the positions raised at the step 2 meeting, my decision is to deny this grievance.

The issue of this grievance is did management violate the Collective Bargaining Agreement (CBA) when it forced the grievant to work on Sundays and not using other employees prior.

Postal Service Position:

Management took the appropriate action to ensure delivery of the mail regardless of which day it had to be delivered.

Union Position:

The Union alleges violations of the CBA, Articles 15.1, 19.1, 5, 30.2.

REMEDY:

The requested remedy is that management follow the Sunday/Holiday work list effective 5/24/16. Make all relief carriers work within the guidelines of the MOU. Compensate each carrier \$50.00 each Sunday that they work.

Postal Service Rebuttal:

Management's position is that no contractual violation exists in this case.

The union has failed to show a contractual violation regarding the scheduling of Rural Carriers to perform work on Sundays. The issue in this case revolves around employees being given a religious accommodation and to what extent an employee can be forced to work. A prevailing thought on this issue is that accommodations can be made for this issue at times and other times they cannot. There is no clear cut answer and each case must be made on a case by case basis.

Management under Article 3 has the right to maintain the efficiency of operations and determine the methods, means, and personnel by which such operations are to be conducted.

A further discussion of the requested remedy in this case must be made.

The Postal Service views the topic of remedy as a serious one that needs to be discussed if a remedy is requested. I do not want to leave the question of remedy without having appraised the Postal Service "jurisprudence" on the issue, jurisprudence which is binding on the parties and an Arbitrator as it comes from national arbitration awards. The following are national level awards which define the scope of

arbitral authority on remedy in the Postal Service. Any questions about the responsibility of the parties to follow national precedent must be quickly put to rest. These principles need to be applied to the particular case. The union needs to establish on the record on just what remedy it seeks and how it gets there. There have been instances when the union's remedial explanation becomes clear only in a post-hearing brief, perhaps accompanied by some "evidence" which may be new. Having everything on the record is paramount to article 15, and forces the moving party to explain/justify any remedy that is sought. In addition to this theory it allows the parties to receive a final and binding decision at the close of the record, if this case were to go to arbitration.

In summary, the issue of the proper remedy should not be left merely lurking in the background. National level precedent establishes useful principles that must be used to shape arbitrators' remedial awards. Either party or an Arbitrator should be left with a ton of bricks dumped in their lap, expecting to build or rebuild a case.

III. National Arbitration Precedent

Long ago National Arbitrator Bernstein in Case No. H1N-1J-C 23247 (1987) pointed out that "National decisions bind the regional arbitrations, and not the reverse." One National Arbitrator in particular, Richard Mittenthal, in a series of decisions, has established important parameters on the limits of remedial relief.

In United States Postal Service and American Postal Workers Union, Case Nos. H1C-NA-C 97, et seq. (1989), the APWU challenged discipline penalties initiated by the Postal Service pursuant to a program,

designated “PAC”, which had not been bargained with the APWU. The Union sought not only the recession of the penalties but complete exoneration for the employees’ conduct on which the penalties were based. The entire issue before Arbitrator Mittenthal presented a pure question of what remedy should be imposed on the Postal Service for its admittedly improper institution of a penalty system not bargained with the Union. It provided a perfect vehicle for Arbitrator Mittenthal to set out principles on the purpose of remedial relief.

Arbitrator Mittenthal began by emphasizing (Award, page 5), as the key point, that “the purpose of a remedy is to place employees (and Management) in the position they would have been had there been no contract violation. The remedy serves to restore the status quo ante.” (emphasis supplied). He acknowledged the substantial discretion his fellow arbitrators had on the question of remedy which, he said, required that they “can and should consider” various criteria in exercising that discretion (emphasis supplied), including: (1) the nature of the wrong done; (2) the damage, or lack thereof, to the employees; (3) the practical impact of the remedy sought; and (4) the nature of the bargaining relationship, among other criteria. Award, p. 6. In short, it is not sufficient for a Postal Service arbitrator, in wielding his/her discretion on the issue of damages, to simply indulge in mathematical calculations while ignoring other critical considerations.

Applying these principles, Arbitrator Mittenthal rejected the Union’s remedial demand as going “far beyond the notion of a status quo ante” by “[rewarding] employees for Management’s procedural error by freeing them of any responsibility for their alleged misconduct.” Award, p. 6. The Union’s proposed remedy was an inappropriate response to the Postal Service’s error

because it tried to provide the employees with an undeserved windfall. Arbitrator Mittenthal rejected such a result.

A subsequent arbitration, United States Postal Service and American Postal Workers' Union and National Association of Letter Carriers, Case Nos. H7C-NA-C 36, et seq. (1994), provided Arbitrator Mittenthal with a further opportunity to discuss the applicable principles for Postal Service arbitrators on the question of appropriate remedial relief. That case involved the overuse of casuals in violation of the national casual cap. However, the circumstances were even more egregious, since the Postal Service had violated a cease and desist order issued by Arbitrator Mittenthal to correct earlier violations. The APWU requested damages for the “unjust enrichment” the Postal Service had received by using casual employees, i.e., the difference between the career USPS rate of pay and that paid to casual employees.

Arbitrator Mittenthal rejected such a theory, repeating that “a damage award...should be limited to the amount necessary to make the injured employees whole”—in other words, compensatory damages “to the extent required, no more and no less.” Award, p. 15. The Union’s requested remedy was inappropriate as it focused, not on the employees’ losses, but on the Postal Service’s gains. As such, it focused on the wrong end of the telescope, and Arbitrator Mittenthal rejected it. The Union’s theory also rested on the incorrect factual assumption “that every hour of work by an excess casual would, absent the violations, have been performed at that same time by bargaining unit employees. That assumption is not borne out by the evidence.” Award, p. 15. Ultimately, and while there were acknowledged problems of applying applicable

records, Arbitrator Mittenthal challenged the parties to come up with a creative solution that focused specifically on trying to compensate individual employees for actual losses – “no more and no less.” Award, p. 15. Every arbitrator’s remedial purpose should likewise be directed to that aim.

There is another theme which underlies Arbitrator’s Mittenthal’s requirements on remedies -- the need that an arbitrator reach a “fair” solution, which Arbitrator Mittenthal saw as a “two way street”, respecting not only the needs of the employees but also of Management. The need to respect Management’s prerogatives and responsibilities appears in the four criteria in Case Nos. H1C-NA-C 97, et seq., discussed above. It is also specifically discussed in his award in United States Postal Service and National Association of Letter Carriers, Case No N8-NA-0141 (1980), where the Union (the NALC) asked the Arbitrator to impose maximization criteria under an MOU signed by the parties. Rejecting that remedy, Arbitrator Mittenthal cited to Supreme Court precedent for the proposition that an arbitrator must bring his informed judgment to achieve a “fair solution” in formulating remedies, a solution the Arbitrator said must be fair to both sides. The same considerations prompted Arbitrator Mittenthal to reject a union monetary remedy which would penalize the Postal Service from exercising its discretion in an MOU, which the Arbitrator said “would be a patently unfair result.” United States Postal Service and NALC, Case No. H4N-NA-C 21 (5th Issue) (1986).

Other National Postal Service Arbitrators also have avoided the simplistic or “broad brush” approach to damages urged upon them by unions in various cases. See the decisions of Arbitrator Shyam Das in United States Postal Service and American Postal Workers

Union, Case No. Q94V-4Q-C 96044758 (2004) and Arbitrator Howard Gamser in American Postal Workers Union and United States Postal Service, Case No. AB-E-2703 (1976). These decisions make clear that damage awards which are not carefully and prudently tailored to the specific facts of a case become, in fact, punitive rather than compensatory. And, as pointed out by National Arbitrator Daniel Collins, punitive damage results are inappropriate in contract law relief. United States Postal Service and Fraternal Order of Police, Case Nos. NAT-96-016-C, et seq. (2000).

To summarize, national arbitration precedent establishes the following principles:

- The purpose of a remedy is compensatory—to put employees and management in the position they would have been in absent the violation.
- The compensatory purpose of a remedy is intended to recompense specific harm done to individual employees. The compensatory purpose is not intended to provide monetary windfalls (*i.e.*, money damages to employees who would not have earned such monies even absent the violation).
- As the purpose of a remedy is compensatory, it is inappropriate to focus on “disgorging” management gains from the violation or otherwise “penalizing” management (*i.e.*, no punitive awards).
- Arbitrators can and should consider the practical impact of remedial decisions on management operations and finances, as well as on employees and unions. Arbitrators should ensure that their awards produce fair and sensible results.

- Remedial awards, at least in contract cases, are not formulaic applications, but require individualized attention and analysis.

In closing the union raises no argument as it relates to requests for information and no other procedural arguments on managements part as part of this grievance. Had the merits of the grievance been met, the grievance would have been denied for the reasons stated above.

Sincerely,

/s/ Robert W. Boban
Robert W. Boban
Labor Relations Specialist
Central PA District

125

[LOGO]

**NATIONAL RURAL LETTER
CARRIERS' ASSOCIATION**

Terry Miner
Regional Representative
P.O. Box 230
Seneca Falls, NY 13148-0230

November 29, 2017

Ms. Barbara Callahan
Central PA District Representative
P.O. Box 392
Lititz, PA 17543-0392

RE: C15R-4C-C 17580127
170-026640C15.EAS
Vince McFadden, 78 - RCA
Lancaster, PA 17601
SCHEDULING – SUNDAY AMAZON

Dear Barbara Callahan:

As you can see by reading the enclosed Step 3 decision, the above referenced grievance has been settled.

The parties agree that management may approve a rural carrier's requested accommodation. However, the accommodation cannot infringe upon or deprive another employee their contractual rights or benefits under the bargaining unit agreement. Additionally, scheduling for Sunday/Holiday parcel delivery shall be in accordance with the May 24, 2016 MOU parcel delivery work list. As a reminder to management, a copy of the MOU is attached to ensure future compliance when scheduling Sunday/Holiday parcel delivery work.

If you have any questions concerning this decision, as always, feel free to call me. By copy of this letter, I have notified the grievant of the decision.

Sincerely,

/s/ Terry L. Miner

Terry L. Miner
Regional Representative

cc: Joey C. Johnson, Director of Labor Relations,
NRLCA
Johnny Miller, Executive Committeeman,
NRLCA
Chrissy Miller, Assistant District Representative
Vince McFadden, Grievant
File

**EASTERN AREA LABOR RELATIONS
[LOGO] UNITED STATES POSTAL SERVICE**

November 20, 2017
17580127
MCFADDEN 170026640C15EAS
LANCASTER PA

STEP 3 SETTLEMENT AGREEMENT

As a complete and final settlement of the subject matter, and without prejudice to the position of the parties in this or any other case, and with the understanding that this settlement is non-precedent setting (unless specifically agreed to in writing) and will not be cited in other proceedings, the following resolution has been entered into by the parties:

While management may approve an employee's requested accommodation, any accommodation must be consistent with applicable provisions of the collective bargaining agreement (CBA) and may not infringe on any other employees' contractual rights. Scheduling for Sunday/Holiday parcel delivery shall be in accordance with The May 24, 2016, MOU Re.: Sunday/Holiday Parcel Delivery Work List (attached).

This agreement constitutes a full and final settlement of all issues arising out of the subject grievance.

/s/ Billie D. Horton 11/20/2016

Billie D. Horton Date
Labor Relations Specialist
Eastern Area

/s/ Terry L. Miner 11/20/2016

Terry L. Miner Date
NRLCA Representative

cc: District Office
2100 N. 13th Street
Reading, PA 19612-9997

UNITED STATES POSTAL SERVICE® cv-01879-JLS Document 36-2 Filed 02/14/20 Page 348 of 356
USPS-NRLCA Joint Step 1 Grievance Form

1a. Grievant's Name (Last, first, middle initial) <i>McFadden Vince</i>		1b. Grievant's EIN (Employee Id Number)	
1c. Grievant's Title, Designation Code, and Route No. <i>RCA</i>		1d. Telephone No. (include area code)	
1e. Complete Mailing Address <i>Wernersville PA 19565</i>			
2a. Post Office <i>Lancaster</i>	2b. Branch/Station	2c. Telephone No. (include area code) <i>610 914 2244</i>	
3a. Date of Incident <i>6-3-17</i>	3b. Date of Step 1 Discussion with (Filing date) <i>DE 6/5/17</i>	3c. Was Grievance Timely? (Explain) <i>YES</i>	
4. Issue (Complaint) <i>Has management violated the National Agreement by forcing me to work on Sunday's allowing others to be not work.</i>			
5. Contract Provisions (Articles at issue) <i>SEE ATTACHED PAGES ① ; ②</i>			
6. Full, Detailed Statement of Undisputed Facts (Attachments, as necessary) <i>SEE ATTACHED PAGES ① ; ②</i>			
7. Management's Full, Detailed Statement of Disputed Facts (Attachments, as necessary) <i>See ATTACHED PAGE 7</i>			
8. Management Contentions <i>See attached page 7</i>			
9. Union's Full, Detailed Statement of Disputed Facts (Attachments, as necessary) <i>SEE ATTACHED PAGES ① ; ② ; ③ ; ④ ; ⑤ ; ⑥</i>			
10. Union Contentions <i>SEE ATTACHED PAGES ① ② ③ ④ ⑤ ⑥</i>			
11. Remedy Sought by the Union <i>SEE ATTACHED PAGES 5 ; ⑥</i>			
12a. Disposition (Check one) <input type="checkbox"/> Settled <input checked="" type="checkbox"/> Denied <input type="checkbox"/> Withdrawn <input type="checkbox"/> Sustained <input type="checkbox"/> Other (Specify)		12b. Date of Disposition <i>7-31-2017</i>	
13. Signature of Installation Head of Designee and Telephone No. <i>[Signature]</i> 717 394-1037		14. Signature of Union Step 1 Official and Telephone No. <i>Chick Miller</i> 717-586-3827	

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL RURAL LETTER CARRIERS'
ASSOCIATION**

Sunday/Holiday Parcel Delivery Work List

The parties recognize the importance of successfully implementing the continued expansion of Sunday/holiday parcel delivery service, which began testing in October, 2013. The parties agree that rural carrier leave replacements will be assigned, as appropriate, to complete Sunday/holiday parcel deliveries.

In order to have sufficient rural carrier leave replacements available to complete Sunday/holiday parcel delivery, a Sunday/Holiday Parcel Delivery Work List will be established for part-time flexible rural carriers (PTF), substitute rural carriers, rural carrier associates (RCA) and rural carrier relief employees. Assistant rural carriers (ARC) will not be included on the Sunday/Holiday Parcel Delivery Work List as these employees are hired specifically to work on Sundays and holidays. This list will be established within thirty (30) days of the effective date of this memorandum of understanding (MOU). Future lists will be established during the same time periods as the relief day work list (Article 8.5.A), and each new list shall supersede the previous list.

There will be no Sunday/Holiday Parcel Delivery Work List utilized upon collapse of the hub concept during peak season. Management will utilize ARCs first; then utilize leave replacements within their own offices and then may borrow leave replacements, as needed, to

complete Sunday/holiday parcel delivery during the hub collapse.

To establish the initial Sunday/Holiday Parcel Delivery Work List, the NRLCA District Representative or designee, and a Postal Service representative designated by the District Manager Human Resources, will create a listing of all available part-time flexible rural carriers, substitute rural carriers, rural carrier associates (RCA), and rural carrier relief employees assigned to the hub location, including stations, branches, and any remotely managed post office(s); associated 'spoke' offices; and nearby rural delivery post offices, as determined by the parties' representatives. Each available leave replacement on this listing will then indicate his/her desire to work or not work on Sundays and holidays, accordingly. Once the signing period is complete, the list will be separated and alphabetized, by last name, regardless of seniority, classification or the assigned office. One list will include all volunteer leave replacements as identified above, and the second list, non-volunteer leave replacements. The initial list should be amended as new RCAs are appointed and/or PTFs, substitute rural carriers, RCAs, or rural carrier relief employees are separated or converted to regular rural carrier. If necessary the parties' representatives may reconvene in advance of a Sunday/Holiday Parcel Delivery Work List posting to ensure all leave replacements are properly annotated.

Newly hired RCAs will be afforded the opportunity to place their name on the Sunday/Holiday Parcel Delivery Work List as volunteers within sixty (60) days of hire. If these rural carriers choose not to sign the volunteer list at this time, they will be placed on the non-volunteer list.

When it is necessary to schedule rural carrier leave replacements for Sunday/holiday parcel delivery, management will first utilize any ARCs assigned to the hub location or associated 'spoke' offices. If there are no ARCs assigned to these locations or an insufficient number of ARCs, management at the hub location will then select leave replacements from the volunteer list on a rotating basis. If there is an insufficient number of leave replacements on the volunteer list, management will schedule leave replacements from the non-volunteer list, also on a rotating basis.

Rural carrier associates serving vacant regular routes or serving regular routes during the extended absence of the regular carriers, including the first ninety (90) days before becoming a Designation 74-0, will not be scheduled for Sunday/holiday parcel delivery unless all leave replacements from both the volunteer and non-volunteer lists are scheduled. Leave replacements on both the volunteer and non-volunteer Sunday/Holiday Parcel Delivery Work Lists will be bypassed in the rotation if the leave replacement has approved leave or an approved non-scheduled day adjacent to Sunday or the holiday. However, the leave replacement on the Sunday/Holiday Parcel Delivery Work List may notify management in writing that he or she does not wish to be bypassed in this circumstance, provided notice is given at the time the leave is requested. In addition, management may bypass leave replacements for Sunday/holiday parcel delivery if such assigned work hours would result in the leave replacement exceeding 40 hours at the end of the work week.

This agreement is reached without prejudice to the position of either party in this or any other matter and does not set precedence in same or similar issues in

the future. Either party may terminate this agreement by providing 30 days written notice to the other party.

/s/ Cathy M. Perron

Cathy M. Perron

Manager

Contract Administration (NRLCA)

U.S. Postal Service

/s/ Jeanette Dwyer

Jeanette Dwyer

President

National Rural Letter Carriers' Association

Date: 5/24/2016

USPS-NRLCA Joint Step 1 Grievance Form

Grievant: Vince Mcfadden

5: Contract Provisions

Article 15.1, Article 19.1, Article 5, Article 30.2.P, Step 4 H91R-4H-D 95031977, Memorandum Opinion for The Vice President and General Counsel United States Postal Service, Elm 518.1, MOU-Sunday/Holiday Parcel Delivery Work List, Arbitration award USPS Case No. G10C-4C-D 12260866

6: Full, Detailed Statement of Undisputed Facts

1. Gerald Groff is an RCA out of the Holtwood Post office.
2. Gerald Groff started working for the USPS on July 14, 2012.
3. Lancaster is the Hub for Amazon Sunday/Holiday delivery.
4. There are currently 2 ARC's assigned to the Lancaster Hub.
5. There are 3 volunteers for Amazon Sunday/Holiday's.
6. Lancaster management allows RCA's to come to work on Sundays after their religious services if requested.
7. Lancaster is not following the guidelines in the MOU for Sunday Amazon by not working Gerald Groff on Sundays.
8. The Sunday/Holiday Parcel Delivery assignment list consists of spoke offices and nearby rural offices. This agreement was signed on June 3, 2016 by NRLCA Designee, Barbara Callahan and USPS Designee, Barbara Kirchner.

9. The nearby Rural offices are Gap, Quarryville, Holtwood, Christiana, Conestoga, Gordonville, Kirkwood, Narvon and Peach Bottom.
10. Ronks, Smoketown and Bainbridge have all been removed from the Lancaster hub and have been added to the Lititz hub effective July 16, 2017.
11. The Spoke offices are Elizabethtown, Columbia, Landisville, Marietta, Millersville, Mount Joy, Strasburg, Mountville and Willow Street.
12. All Postmasters are forcing their RCA's to work on Sundays/Holidays except for the Postmaster of Holtwood.
13. This grievance was mutually agreed upon an extension and this grievance is timely.
14. Lancaster Post Office schedules between 12-15 RCA's a week on Sundays from the list by alphabetical order.
15. Gerald Groff is scheduled accordingly to the MOU guidelines for Sunday/Holiday Parcel Delivery Work List for Sunday Amazon and refuses to work Sundays.
16. OIC, Brian Hess states that Gerald Groff informs him that he is not working due to his religious beliefs every time he is scheduled.
17. Gerald Groff never worked a Sunday ever in his career at the Postal Service.
18. The guidelines for the MOU signed on June 3, 2016 were implemented on March 19, 2017 with the schedule rotating in alphabetical order and nearby offices being utilized.

19. On April 23, 2017, Lititz was separated and became a separate hub.
20. Manheim, New Holland and Ephrata are offices that are now part of Lititz Hub.
21. According to the July 2, 2017 data base, there are a total of 40 relief carriers. 37 are non-volunteers.
22. Gerald Groff was scheduled to work on (3-19-2017) - (4-2-2017) - (4-16-2017) - (4-23-2017) - (5-7-2017) - (5-21-2017) - (5-29-2017) - (6-11-2017) - (7-2-2017) - (7-23-2017) however, never showed up for work as scheduled.
23. Management has made exceptions to the following carriers (Tina Kylar - Christiana Post Office), (Rita Venuto - Ronks Post office), (Michelle Beattie - Peach Bottom) allowing them to come to work on Sundays after their religious services.

9: Union's Full, Disputed Detailed Statement of Disputed Facts

10: Union Contentions

Management violated Article 15.1 by failing to resolve the issue at the initial discussion level when made aware of the violation.

Management violated Article 19.1 is cited to incorporate all handbooks and manuals listed in Section 5 of this grievance in addition to the specific arguments made by the Union in section 10 regarding the cited handbooks and manuals.

Management violated Article 5 when they took action affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the NRCLA

which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

Article 30.2.P states that an office-wide list will be established for substitutes, rural carrier associates, and rural carrier relief employees who desire to work on Sunday. When there is a need to work leave replacements on Sunday, the Employer may require a part-time flexible rural carrier to work prior to selecting qualified employees from the list. The Employer will make every reasonable effort to avoid requiring substitutes, RCA's and RCR's not on the list to work. The Union contends that the Postal Service is a 24/7 operation. RCA's refusing to work Sundays could impact the operation of the Postal Service. Request for Religious Accommodations is not intended to be exempt of working Sundays. A religious accommodation is any adjustment to the work environment that will allow an employee to practice his or her religion. The need for religious accommodation may arise where an individual's religious beliefs, observances or practices conflict with a specific task or requirement of the position or an application process. Accommodation requests often relate to work schedules, dress and grooming, or religious expression in the workplace if it would not pose an undue hardship. The Postal Service can refuse to accommodate an individual's religious beliefs or practices if the Postal Service can demonstrate that the accommodation would cause an undue hardship. An accommodation may cause undue hardship if it is costly, compromises workplace safety, decreases workplace efficiency, infringes on the rights of other employees, or requires other employees to do more than their share of burdensome work. Undue hardship also may be shown if the request for an accommodation violates the terms of a collective bargaining agreement or job rights established through a senior-

ity system. Allowing some rural carriers to be exempt from working Sundays violates the collective bargaining agreement between the United States Postal Service and the National Rural Letter Carriers' Association. Allowing some Rural carriers to be exempt from Sunday work will require other employees to do more than their share of burdensome work. The Union contends that this is unfair and unjust to other employees and it is disparate treatment. While management states that the rural carriers that have religious accommodations will work on holidays. The Union contends that there are 10 holidays and 52 Sundays in a year. How is 10 days compared to 52 fair? This is not fair at all.

The Section of Title VII regulating employment by the Federal Government provides that "all personnel actions affecting employees or applicants for employment...in the United States Postal Service...shall be made free from any discrimination based on....religion." 42 U.S.C 2000e-16(a). Although this language does not plainly require accommodations of religious practice—as opposed to simply prohibiting affirmative "discrimination based on" such practice—Congress, as the Supreme Court has explained, has incorporated {such a requirement} into the statute, somewhat awkwardly, in the definition of religion. *Ansonia Bd. Of Educ. V. Philbrook*, 479 U.S. 60, 63 n. 1 (1986). That definition provides as follows: "The term 'religion' includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C 2000e(j). Title VII thus, through the interaction of these two sections, is understood to require federal employees in "all personnel actions" to

reasonably accommodate to “and employee’s religious practices, unless so accommodating would impose “undue hardship” See *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 75 (1977) (explaining that “the employer’s statutory obligation to make reasonable accommodation for the religious observances of its employees, short of incurring an undue hardship, is clear”). Any accommodation that would cause an employer to bare “more than a de minimis cost” imposes “undue hardship.” *Id.* At 84; see *Ansonia*, 479 U.S. at 67 (same). And the cost need not be economic. *Cloutier v Costco Wholesale Corp.*, 390 F. 3d 126, 134-35 (1st Cir. 2004).

Title VII does not require (or permit) the Postal service, in response to religious objections, to depart from the oath of office mandated by 39 U.S.C 1011, because for the Postal Service to violate a federal statute would impose “undue hardship” as a matter of law. Nothing in the relevant provisions of Title VII either expressly or implicitly provides for the disregard of a congressional mandate in the name of reasonable accommodation to religious practices: Section 2000e(j) contains to “notwithstanding any other law” language; nor does it otherwise suggest that it overrides other federal law, such as RFRA (Religious Freedom Restoration Act of 1993) does by expressly “applying to all Federal Law, “42 U.S.C. 2000bb-3(a). Cf. *TWA*, 432 U.S. at 79 (holding that, in absence of “a clear and express indication from Congress” contrary, it would cause undue hardship under section 2000e(j) for an employer to violate “an agreed-upon seniority system” in an “otherwise valid” collective-bargaining contract). Furthermore, as you have noted, see April USPS Letter at 2, the Postal Service, as a component of the Executive Branch of the Federal Government, has a background constitutional duty, derivative from the

President's to take care that the laws be faithfully executed. See U.S. Const. art II, § 3. The Postal Service oath is and long has been among those laws and thus within that duty, and we see no basis in the text of Title VII for discerning any implicit intent to alter that oath's express obligation.

The presidential guidelines that we discuss more fully in our RFRA analysis in the next part take the same view. In addressing Title VII's requiring of reasonable accommodation, they recognize that undue hardship is imposed if the accommodation "would cause an actual cost to the agency or to other employees or an actual disruption of work, or....is otherwise barred by law." The White House, Office of the Press Secretary, Guidelines on Religious Exercise and Religious Expression in the Federal Workplace 1.C (Aug 14, 1997) ("Guidelines") (emphasis added). The Union contends that by allowing some rural carriers to be exempt from working Sundays, it causes other employees to work close to 52 Sundays a year while other employees work 10 holidays a year if they include Christmas and Thanksgiving. While the employees that are working sometimes 2 and 3 Sundays in a row causes an extra cost to the United States Postal Service because of the overtime. The Postal Service is overworking some employees and not enforcing all relief carriers to work on Sundays.

According to Step 4 H91R-4H-D 95031977 states that the new language in Article 30.2.P of the National Agreement now provides for Sunday work. It provides the establishment of an office-wide list for those substitutes, rural carrier associates and rural carrier relief employees who desire to work on Sundays. Regular rural carriers may not work on Sundays. The Union contends that this step 4 has been implemented

since May 1, 1996 prior to some RCA's employment. Sunday work has been in our National Agreement prior to Amazon Sunday parcel delivery. The Union contends that management should enforce all relief employees to work on Sundays and not choose who is allowed to be exempt. This is not fair to the whole Rural carrier craft for those relief employees sometimes working the holiday and two or three Sundays in a row.

The new Memorandum of Understanding between the USPS and the NRLCA, Sunday/Holiday Parcel Delivery Work List was signed and effective on May 24, 2016. The parties recognize the importance of successfully implementing the continued expansion of Sunday/holiday parcel delivery service, which began testing in October of 2013. The parties agree that rural carrier leave replacements will be assigned, as appropriate, to complete Sunday/holiday parcel deliveries. The MOU states that management will first utilize all ARC's assigned to the hub location or associated 'spoke' offices. Management at the hub location will then select leave replacements from the volunteer list on a rotating basis. If there is an insufficient number of leave replacements on the volunteer list, management will schedule leave replacements from the non-volunteer list, also on a rotating basis. These new guidelines are rules that management is not abiding in. The Union contends that management is not following the MOU. Management is allowing a rural carrier from Holtwood to be exempt from working Sundays and this is a major hardship on the other relief carriers. Management is disparate in their treatment among carriers, forcing all other RCA'S to work on Sundays but allowing one RCA to not work is ludicrous and not right.

All relief employees are all aware of the Postal Service rules that require employees to report to work as scheduled and that they are to work Sundays according to the MOU that was signed on May 24, 2016. The Union contends that management has violated the National Agreement by allowing Mr. Groff to refuse to work on Sundays and this violation is interfering with operating requirements. This is an undue hardship on all other affected employees that come to work on Sundays.

The Union contends that Arbitrator Debra Simmons Neveu, Esq, upheld a removal for an employee was charged with violation of the Postal Service Standards of Conduct-AWOL. The award summary was the evidence is that management reasonably accommodated the grievant's religious beliefs and practices in accordance with Postal Service policy, but assigned the grievant to work on Saturdays when operating requirements made such assignments necessary. The evidence is that the grievant was informed that he was required to work on Saturdays when scheduled. The grievant repeatedly failed to report to work on Saturdays as scheduled. Management stated that the APWU believed that the grievant was singled out for his religious beliefs with regards to working Saturday. In this award, Management cited Arbitration Thomas Fritsch case #B98C4BD00072002 stating that the grievant did not report to work on some Sundays. In this case, it was undisputed that the grievant in this case refused to work on Sundays and was removed by the Postal Service. Also cited in this arbitration was Arbitrator James Odom Jr case # H00T-1 H-C 02181920 which was a claim of personal hardship with specific religious beliefs made by the grievant, the parties' labor agreement does not provide an arbitrator authority to extend relief on this basis. The Postal

Service has long stood on the premises that if possible they would accommodate an employee's request to work on Sundays. The Postal Service now finds themselves in need of the services of Mr. Groff to work on Sundays according to the MOU. Mr. Groff is not working Sundays so therefore this affects RCA's on the schedule. The Postal Service cited ELM 665.15 Obedience to Orders stating employees must obey the instructions of their supervisors. Management has given Mr. Groff instructions to work Sundays and has not worked one single Sunday ever. The Postal Service cited ELM 665.41 requirement of regular attendance which states failure to be regular in attendance may result in disciplinary action. Management is allowing an RCA to not be required to work on Sundays. Management is in violation of their own regulations.

11. Remedy Sought by the Union

Follow the MOU Sunday/Holiday Parcel Delivery Work List effective 5/24/2016 immediately. Make all relief carriers work according to the guidelines in the MOU. Make all relief carriers whole for all lost wages and benefits. Compensate each relief carrier \$50.00 every Sunday that they work and other relief carriers are not being forced to work according to the guidelines of the MOU.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 19-CV-1879

GERALD E. GROFF,

Plaintiff,

v.

MEGAN J. BRENNAN, POSTMASTER GENERAL,
UNITED STATES POSTAL SERVICE,

Defendants,

JOINT-STIPULATION OF UNDISPUTED FACTS
FOR PURPOSES OF SUMMARY JUDGMENT

The parties, in accordance with the policies and procedures of the Hon. Jeffrey L. Schmehl, submit this joint-stipulation of undisputed facts for purposes of summary judgment.

1. The parties have agreed that the abbreviation “USPS” refers to the United States Parcel Service.
2. Groff identifies as an Evangelical Christian within the Protestant tradition. [Groff. Dep. 26:17-27:7; Plaintiff’s Answers to Defendant’s First Set of Interrogatories, No. 4, at 7-8].
3. On April 7, 2012, Gerald E. Groff was hired as a Temporary Relief Carrier at the Quarryville Post Office for the USPS. [Groff Dep. 84:17-25 to 85:1-17]. This position was effective April 26, 2012. [USPS00020].
4. Groff transferred to the Paradise Post Office as a Rural Carrier Associate on July 14, 2012. [Groff Dep. 87:3-25 to 88:1-23].

5. As an RCA, Groff was classified as a “non-career” employee, responsible to cover for the work of any Rural Route Carrier (which is a “career” employee), in the delivery of mails and parcels. [Hess Dep. 12:1-22; Gaines Dep. 52:9-25 to 54:1-14]. Part of being an RCA is being flexible. [Groff. Dep. 148:6-8].

6. Most career employees who are mail carriers began their USPS employment as a non-career employee. An RCA is one such non-career position. This is generally an entry-level position. [Gless Corp. Rep. Dep. 7:9-11; Gaines Dep. 49:14-25 to 50:1-15].

7. Groff was administratively part of the Central Pennsylvania District of USPS, which includes Lancaster County.

8. On May 24, 2016, USPS and the National Rural Letter Carriers Association (“NRLC” or “Union”) entered into a Memorandum of Understanding (“MOU”) about how the USPS would deliver for Amazon.com, Inc. (“Amazon”).

9. The MOU requires the USPS to create two lists of part-time flexible carriers. The procedure is as follows:

- a. First, the union creates a list of all part-time flexible rural carriers, substitute carriers, RCAs, and rural carrier relief employees.
- b. Second, every employee is asked if he or she wants to work on Sundays and holidays.
- c. Third, two lists are created: one of employees who want to volunteer to work on Sundays and holidays; and one of employees who do not.

[USPS00264-65].

10. On any given Sunday or holiday, management determines how many carriers are necessary given the

expected mail volume. [USPS00264-65]. Under the MOU Management then assigns carriers as follows:

- a. First management schedules assistant rural carriers (“ARCs”). If there are sufficient ARCs, no additional part-time flexible carriers are scheduled.
- b. If there are insufficient ARCs, management then schedules additional carriers from the volunteer list, on a rotating basis. If between the ARCs and volunteers there are sufficient carriers to cover the need, no additional part-time flexible carriers are scheduled.
- c. If there are insufficient carriers between the ARCs and volunteers, additional part-time flexible carriers are scheduled, on a rotating basis, from the non-volunteer list.

[USPS00264-65].

11. Pursuant to the MOU, a part-time flexible carrier may be bypassed in the rotation if:

- a. The part-time flexible carrier has approved leave or a non-scheduled day adjacent to the Sunday or holiday; or
- b. Scheduling the part-time flexible carrier to work on Sunday or holiday would result in the carrier exceeding 40 hours at the end of the work week.

In addition, RCAs covering the extended vacancy of full time career carriers are only scheduled if all other part-time flexible carriers have been scheduled and more carriers are still needed. [USPS00264-65].

12. For RCAs, seniority is based on time in service in a particular office, not based on time working for USPS as an organization. [Hess Dep. 161:22-25].

13. At all relevant times that Groff was working at Holtwood, Brian Hess was Groff's Postmaster. [Groff Dep. 142:15-25].

14. When Hess hired Groff, Hess knew Groff transferred to avoid Sunday Amazon deliveries due to Groff's religious beliefs. [Hess Dep. 15:9-18].

15. At the time Groff transferred, the Holtwood station was not delivering Amazon packages on Sundays. [Hess. Dep. 14:10-14, Dec. 16, 2019]. No one ever promised Groff that the station would continue to be so exempt or that he specifically would be exempt from delivering Sunday. [Groff. Dep. 140:18-141:5].

16. The first Amazon schedule involving Holtwood carriers was for Sunday March 19, 2017. [USPS001520-21]. Groff was scheduled for that Sunday. [Groff. Dep. 202:2-3].

17. From the time he first transferred to the Holtwood station until March of 2017, Groff got along well with Postmaster Hess and the other employees in that station. [Groff. Dep. 156:8-17]. He was not disciplined. [Groff. Dep. 156:21-157:4].

18. Beginning in March, 2017, the Holtwood Post Office was required to participate in Amazon package deliveries. This meant Groff could be scheduled to work on Sundays. [Groff Dep. 157:5-12; Hess Dep. 15:1-8].

19. In March of 2017, postmasters and managers participated in a teleconference led by Douglas French about implementing the Amazon contract. [Hess Dep. 73:15-25 to 74:1-14; Shetty Dep. 17:9-22].

20. At that time, Douglas French was serving as Postmaster at Lancaster City. [Hess Dep. 74:25 to 75:1-2].

21. From the time Groff was required to participate in Sunday Amazon deliveries until his employment with USPS ended on January 18, 2019, Groff never worked on a Sunday but did make Amazon deliveries on holidays that were not a Sunday. [Evans Dep. 28:18-23, 41:2-5; Groff Dep. 174:17-22, 189:11-22, 244:3-25 to 245:1].

22. Management suggested all of the following to Groff:

- a. If he was scheduled on a Sunday, he could take another day that week entirely off from work at the USPS as a day of worship. [Groff. Dep. 210:21-24].
- b. If he was scheduled on a Sunday, he could come in later, after church. [Groff. Dep. 215:10-23].
- c. Management would contact other stations to attempt to find coverage for Groff when he was scheduled. If coverage was found, Groff would be excused. [Gaines Dep. 45:23-25, 84:21-85:11, Dec. 18, 2019] [Hess Dep. 33:12-24].

23. The following is a non-exhaustive list of Sundays on which Groff was scheduled but did not work: March 19, 2017; April 2, 2017; April 16, 2017; April 23, 2017; May 7, 2017; May 21, 2017; June 11, 2017; July 2, 2017; July 23, 2017; August 6, 2017; August 28, 2017; September 17, 2017; October 1, 2017; October 15, 2017; December 3, 2017; December 17, 2017; January 14, 2018; March 4, 2018, March 18, 2018; March 25, 2018; April 1, 2018; April 8, 2018; April 22, 2018; and May 13, 2018. [Groff. Dep. 217: 4-22]. This shows at least 24 scheduled Sundays where Groff and did not report to work.

24. During the non-peak season of 2018, Postmaster Hess sometimes found coverage so that Groff did not have to work. [Groff. Dep. 197:12-19; Hess Dep. 207:7-208:3]

25. Hess notified Groff that USPS can progressively impose discipline on him for refusing to work Sunday, beginning with a letter to warning, to a 7-day suspension, to a 14-day suspension, and then termination. [Groff Dep. 231:7-25 to 233:1-13].

26. Paper suspensions, like the kind Groff received, do not cause an employee to lose work or pay. [Hess Dep. 45:17-56:4].

27. Within the USPS, discipline is intended to be “corrective” in nature, not punitive. [Hess Dep. 28:7-10, 29:3-14].

28. Solely by virtue of Groff not reporting for work on Sundays, USPS held eight (8) PDIs with Groff and imposed progressive discipline: On June 9, 2017, USPS issued Groff a Written Letter of Warning. On January 2, 2018, USPS issued Groff a 7-Day Paper Suspension. On October 5, 2018, USPS issued Groff a 14-Day Paper Suspension. [USPS 1623; USPS1695 to 1700; USPS1717-18; USPS1927-28; USPS1934; USPS1986; USPS2014; USPS2017; USPS2026-28; P017-22; Plaintiff’s Answers to Defendant’s First Set of Interrogatories, No. 5, at 12-19]. For Groff, the discipline imposed on him was intended to correct “[n]ot reporting to work as scheduled” for Sundays. [Hess. Dep. 29:15-24].

29. Aside from attendance, Groff otherwise had an excellent performance as an RCA, being a good and efficient employee. [Sheddy Dep. 14:21-25 to 15:1-7; Hess Dep. 158:19-23].

30. On April 5, 2017, Groff was summoned for a PDI with Station Master Aaron Zehring for failing to report to work on Sunday. [USPS1623].

31. Zehring suggested Groff pick a different day of the week for observance of the Sabbath. [Groff Dep. 327:16-22; Plaintiff's Answers to Defendant's First Set of Interrogatories, No. 5, at 12].

32. As a result of the aforementioned Letter of Warning, on July 11, 2017, Groff contacted an Equal Employment Opportunity counselor at USPS and requested pre-complaint counseling on the allegation of the failure of USPS to give a religious accommodation from Sunday deliveries ("First EEO Request"). [USPS1711; Groff Dep. 226:2-5].

33. USPS next issued Groff a 7-Day Paper Suspension for not working the following Sundays: December 3, 2017 and December 17, 2017. [USPS1927].

34. As a result of the aforementioned 7-Day Paper Suspension, on February 3, 2018, Groff contacted an Equal Employment Opportunity counselor at USPS and requested pre-complaint counseling on the allegation of USPS' failure to give a religious accommodation from Sunday deliveries ("Second EEO Request"). [USPS1955-60].

35. Brian Hess held a PDI with Groff on September 6, 2018, due to Groff not reporting for work on Sundays. [Plaintiff's Answers to Defendants' First Set of Interrogatories, No. 5, at 19].

36. USPS issued Groff a 14-Day Paper Suspension on October 5, 2018 for not reporting for Sunday deliveries on June 17, 2018, August 12, 2018, and August 26, 2018. [P21].

37. As a result of the aforementioned 14-Day Paper Suspension, Groff complained through the EEO process. [Groff Dep. 223:2-10].

38. Groff tendered his resignation on January 18, 2019. [Groff Dep. 105:13-20, 127:10-17, 128:4-9, 205:8-11].

39. Groff also had additional Sunday absences in the time period following the PDI (on September 6, 2018) and receiving the 14-Day Paper Suspension on October 5, 2018. [Plaintiff's Answers to Defendants' First Set of Interrogatories, No. 5, at 19].

40. It would have been futile for Groff to have transferred to any other post office as an RCA, because all RCAs have to be available to deliver for Amazon deliveries on Sundays. [Gaines Dep. 49:1-13].

41. Since Lyle V. Gaines became District Manager for Labor Relations in 2010 or 2011, he could only recall two requests for religious accommodation—one was Groff's and the other was withdrawn after the employee resigned. [Gaines Dep. 12:4-12]. Groff's "was a very rare request" for Gaines. [*Id.* at 30:6-7].

42. Where implementing the Amazon contract in the Central Pennsylvania District, USPS drew a distinction between the "peak" and the "non-peak" seasons. The "peak" season varied but was generally defined as the Sunday before Thanksgiving until the first or second week of the new year. [Hess Dep. 27:12-21, 94:9-20].

43. During the non-peak season, all RCA's in Lancaster County had to report for Sunday and holiday deliveries at the Lancaster County Annex in Lancaster City. [Groff Dep. 172:19-25 to 173:1-2; 175:1-22; French Dep. 19:2-5].

44. During the peak season, all Amazon deliveries were handled in each respective post office, using its own staff and without the Lancaster County Annex. [Groff Dep. 175:23-25 to 176:1-17].

45. RCAs have no contractual right to specific days off. [Hess Dep. 85:14-17].

46. RCAs received overtime pay for working Sundays and holidays. [Evans Dep. 25:16-18].

47. During non-peak season, RCAs were permitted to volunteer to always be scheduled for Sunday delivery. [Evans Dep. 24:2-6]. Otherwise, Sunday delivery was assigned during non-peak season using a rotating schedule for all other RCAs, without regard to seniority. [Evans Dep. 24:7-21].

48. No RCA had more of less of a right to have Sunday off than another RCA. [Evans Dep. 24:22-24].

49. During some non-peak seasons at issue in this case, Diane Evans was the Supervisor at the Lancaster County Annex in charge of assigning RCAs for Amazon deliveries on Sundays and holidays. [Evans Dep. 11:14-25 to 12:1-20]. She had no scheduling responsibility for the balance of the RCAs workweek. [*Id.* at 13:24-25 to 14:1-5]. Once she created a list of Sunday assignments, it would then be reviewed and finalized by Lancaster City Postmaster Douglas French, who then circulated it to other postmasters and verified with them that their employees were notified. [French Dep. 10:19-25 to 11:1-12, 13:3-20].

50. During the non-peak season, RCAs were drawn from the entirety from Lancaster County and reported to the Lancaster County Annex for an assigned route that could be anywhere in Lancaster County, including outside of that RCA's regular workplace. [Evans Dep.

20:3-25 to 21:1-6]. Also, the delivery trucks for Amazon sometimes did not arrive on time. [*Id.* at 16:23-25 to 17:1-5]. These factors sometimes caused RCAs to experience delays, sometimes causing them to work eight hours to complete an otherwise six-hour route. [*Id.* at 17:8-20].

51. During the “peak” season, Hess located another RCA who volunteered to cover Groff’s Sunday shifts. [Hess Dep. 33:24-25 to 34:1-19].

52. In the absence of unforeseeable issues where someone called-out at the last minute, Hess was able to find volunteers for most of Groff’s Sunday shifts at Holtwood. [Hess Dep. 207:24-25 to 208:1-4]

53. Hess did not have to double-up routes at Holtwood for Sunday deliveries because their Amazon volume did not justify such. [Hess Dep. 93:23-25 to 94:1-3].

Dated: February 11, 2020

Respectfully submitted,

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Dated: 2/12/20

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 19-CV-1879

GERALD E. GROFF,

Plaintiff,

v.

MEGAN J. BRENNAN, POSTMASTER GENERAL,
UNITED STATES POSTAL SERVICE,

Defendant,

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[1] IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 19-CV-1879

GERALD E. GROFF,

Plaintiff

vs.

MEGAN J. BRENNAN, POSTMASTER GENERAL
UNITED STATES POSTAL SERVICE,

Defendant

Deposition of GERALD E. GROFF, a witness herein, called for examination by counsel for the Plaintiff in the above-entitled matter, pursuant to notice, the witness being duly sworn by DIANA NETHERTON, Notary Public, RPR, for the State of Pennsylvania taken on Friday, December 20, 2019 at 9:30 a.m. at Clymer, Musser & sarno, 408 West Chestnut Street, Lancaster, pennsylvania, the proceedings being taken down by DIANA NETHERTON, and transcribed under her direction.

* * *

[27] you and it would be accurate, Christian or Bible believing Christian?

A. Or Evangelical Christian.

Q. So all three of those terms describe you, Christian, Evangelical Christian and Bible believing Christian?

A. Yes.

Q. And just to make sure that I understand the general gist of what your belief entails, can you describe to me what you believe in terms of the Sabbath or the day of rest?

A. As far as it relates to the Postal Service?

Q. What you believe about it generally, what your religious belief is.

A. Very simply I believe that the Lord's day, or Sundays, is meant to be a day of rest, and that it's unique and holy, a day set aside to worship the Lord, and it's supposed to be a day of rest where we abstain from work.

Q. And if I understand it correctly, part of that belief is that God created the earth in six days and on the seventh day, God rested, and that's why the seventh day is a rest day as well for human beings?

A. That's a very -- that's the beginning [28] of it, but yes, that would be true.

Q. And just to make sure it's clear because people have different religions, and have different days as the Sabbath, you recognize Sunday as the Sabbath?

A. Yes.

Q. And so your religious believe is that you should not be engaging in work on Sundays because that is the day of rest?

A. Yes.

Q. Does that include all types of work or only secular work?

MR. CROSSETT: Object to the form. You can answer.

THE WITNESS: Could you say that question again?

BY MS. FINKELSTEIN:

Q. Does that include all types of work or only secular work?

A. I believe that there are certain kinds of work that would be permissible on Sundays. We generally call them deeds of necessity or acts of necessity. For example, a pastor has to work on Sunday to lead the church. This is going by what Jesus' examples were in the New Testament. Then doctors and

* * *

[58] Q. What do you mean live production? Theater?

A. Yeah. It was a Christian live production of a Bible story.

Q. Did they put on productions on Sundays?

A. No, of course not.

Q. And it looks like you were paid \$21,600 as a salary; is that correct?

A. I have no recollection of my salary for that time, but that's what I put. I must have referenced my taxes or something for that.

Q. And then the reason that you left was why? It says voluntarily resigned.

A. I voluntarily resigned. I believe that was to go to this next one in number four. I had been requested to become staff at this mission school called Dove School of Global Transformation.

Q. You left Sight and Sound Ministries because you had gotten another job?

A. It was not a job. It was another position. I was a volunteer. I was not paid.

Q. So you left a paying position to get a position that was volunteer; is that right?

A. This time I did.

Q. Why?

* * *

[100] We previously looked at Form 50 that indicated when you became a rural carrier associate, you were a rural carrier associate in the Paradise Post Office. Did you then switch back to the Quarryville Postal Service?

A. Yes. Based on its effective date, that's what the postmaster would have put down as the official date when I had my transfer was complete to go to Quarryville from Paradise.

Q. That was March 8th, 2014; is that correct?

A. That's what the Form 50 says.

Q. By the time you transferred back to Quarryville, you had gotten some raises and your base salary at that point was \$19.94 an hour?

A. Yes.

Q. But you were still a rural carrier associate?

A. Yes. It was just a transfer in the same position.

Q. And the transfer came about because you requested to transfer back to Quarryville?

A. Yes.

Q. And your postmaster in Paradise was amenable to that and agreed to allow you to transfer?

[101] A. Yes.

Q. The postmaster was also amenable and agreeable to having come and be a rural carrier associate Quarryville?

A. Yes.

Q. He was willing to transfer when you requested a transfer?

A. Correct.

Q. And you transferred to Quarryville in part because you wanted to be in a post office where you could eventually be the rural carrier associate with the most seniority for bidding on full-time carrier positions?

A. I'm trying to remember. This was five years ago. My motivations for transferring were more than that but could you repeat that?

Q. Sure. Let me ask a slightly different question.

One motivation for you to transfer back to Quarryville is because you wanted to be in a post office where you would be in a position to be the rural carrier associate who had the most seniority, and it seems as though Quarryville would put you in a better position to be that rural carrier associate with the most seniority?

A. No. That wasn't my motivation for [102] moving.

Q. What was your motivation?

A. My motivation was to be closer to home and to avoid working on very busy highways during tourist season in Paradise.

Q. Do you agree with me that a rural carrier associate stands the best chance of being able to

successfully bid on and be given a full-time carrier position if that rural carrier associate is the most senior rural carrier associate in a particular post office?

A. Based on the Post Office's policy of choosing the most senior eligible RCA for promotion, yes.

Q. Are you telling me today that your move to Quarryville, that the fact that you might be in a position to be the most senior rural carrier associate, that didn't factor in your decision to move to Quarryville at all?

A. No.

Q. Did you understand that you were going to be in a worse position in terms of seniority if you transferred to Quarryville?

A. I don't remember how many subs there were at Quarryville at that point. I truly don't [103] remember.

Q. I'm going to show you what I'm marking as Exhibit 10.

(Exhibit No. 10 marked.)

BY MS. FINKELSTEIN:

Q. It's United States Postal Service 3517 at the bottom.

This is your W-2 form for 2014. Is it correct that you earned \$38,897.26 in wages, tips, and other compensation in 2014 working for the Postal Service?

A. That looks correct.

Q. This is just a W-2 showing your income from the Postal Service, not from any other position?

A. Right.

Q. In order to figure out how many hours you worked, all we have to do is take the \$38,987.26 and divide it by how much you were being paid that year and that would show us the number of hours?

A. I was trying to give you an approximation to answer your question about how many hours I worked on average per week through my career. It's very difficult with pay raises and new contracts and everything to say a figure to give you an answer. So I was just ball parking it for you earlier.

Q. Do you think that you worked 40 hours a [104] week for the Postal Service in 2014?

A. I wouldn't remember.

Q. I'm going to show you Exhibit 11.

(Exhibit No. 11 marked.)

BY MS. FINKELSTEIN:

Q. According to this Form 50, on August 20, 2016, you transferred to the Holtwood Post Office; is that correct?

A. I'm looking it over, and that's what I remember. It was in August of 2016 that I transferred to Holtwood.

Q. By this time you earned \$21.26 an hour?

A. Correct.

Q. But you were still a rural carrier associate?

A. Yes.

Q. Was your motivation for moving to Holtwood that you thought that you would have a better chance of being the most senior rural carrier associate able to bid on a full-time associate position in the office?

A. No.

Q. What was your motivation for the transfer?

A. My only motivation to transfer to [105] Holtwood is because at that time Holtwood was not required, because of its small size, to deliver Amazon packages on Sundays. And so I actually sacrificed my seniority at Quarryville to transfer to Holtwood accepting that I was the lowest position in seniority at Holtwood, so that I would be exempt at peak season from Amazon Sunday delivery.

Q. So you quickly became the most senior rural carrier?

A. I had no way to know that.

Q. But that's what ended up happening?

A. In effect, yes.

Q. I want to circle back to what you said about Amazon. Let me close the loop on this topic first. While you were in the Holtwood Post Office for the entire rest of the time in your employment at the post office, that was where you worked, correct?

A. From 2016 until when I was constructively discharged in January 2019, I was at Holtwood.

Q. In that entire time, none of the full-time career carriers ever left?

A. No. They would speak of it often. But they didn't. They were eligible to leave but they didn't leave.

* * *

[107] would consider a transfer to fill that position and he said yes.

Q. Who was the postmaster at Quarryville at the time you transferred to Holtwood?

A. Patricia, and she goes by Trish, Wright.

Q. Did you talk to Ms. Wright before you transferred to the Holtwood Post Office?

A. Yes.

Q. Was she agreeable to the transfer to the Holtwood Post Office?

A. My understanding is she doesn't have a choice. There's a 30-day wait period to not completely devastate your leaving office, but she agreed to it. I actually left because of a stipulation that she had made to me personally.

Do you want me to explain that?

Q. I was going to ask you about it in a minute.

A. I'll wait until the question.

Q. So the United States Postal Service, a second time, allowed you to transfer stations when you requested it?

A. Yes.

Q. Now, you mentioned that one of the [108] reasons -- the reason that you transferred was because of Amazon package delivery on Sunday. Tell me what you meant by that.

A. Well, Quarryville was required to deliver Amazon packages on Sunday at that time, and in 2015 is when that started. And substitute carriers were required to go to Lancaster to deliver parcels, if I remember correctly, during the Christmas peak season. In 2015 Christmas peak season, Trish and I had an agreement. It was her idea that she would

exempt me to go to the Lancaster hub if I was willing to cover for her on other shifts during the week, which would be Monday through Saturday.

For example, we have an AUX route in that office. There was often not enough substitutes to cover that AUX route because they were all on other routes, so that route had to be split. If I was scheduled that day or she would ask me to work a full route, and then also cover that entire route or part of that route as sort of my compensation for her allowing me to not work on Sundays in Lancaster.

Q. Okay. By AUX route, you mean an auxiliary route?

A. Yes.

Q. And AUX route is essentially, there's [109] so much mail to deliver that there's additional mail aside from the regularly scheduled routes assigned to that post office?

A. It's a route that has to be covered every day. It's not like -- somebody has to do that route every day. It's just not a full route. It's just given as an extra but it has its own case and everything.

Q. By case you mean that is where you take the mail and sort it so it's organized before you take it in the truck and deliver it?

A. Yes. There would be a required staff member to work that route every day.

Q. Back in 2015 in Quarryville, there was so much mail to deliver that Ms. Wright was short in terms of having enough carriers to deliver all of the mail?

MR. CROSSETT: Object to the form. You can answer.

BY MS. FINKELSTEIN:

Q. I think that's what you said. Back in 2015, there was so much mail to deliver that there was this auxiliary route that sometimes Ms. Wright had trouble getting a carrier to deliver it so she would pivot the route and split it up?

* * *

[111] A. 2015, things changed because, as I said, New Providence and Quarryville merged. So if we're speaking of Quarryville itself, there may have been between five and six full routes.

Q. In 2015 were there five to six rural associates assigned to Quarryville?

A. I don't remember.

Q. And so do you know whether Ms. Wright got approval from anyone above her in management to exempt you from delivering parcels on Sunday?

A. I don't know. She just made me that offer and I appreciated it.

Q. If she made the offer, why did you leave the Quarryville Postal Service to go to Holtwood?

A. Repeat the question?

Q. If she made you that arrangement, to exempt you from working on Sundays, why did you leave the Quarryville Post Office to go to the Holtwood Post Office?

A. After that Christmas season was over and she had accommodated me in this way, the following summer or fall of 2016, I don't remember the exact date, Trish approached me and said, by the way, you're going to have to either find another job or plan to

work Sundays this Christmas, that would have been Christmas [112] 2016, because I'm not -- to quote her, I'm not going to put up with your S-H-I-T again this year.

Q. Did she regularly swear at you?

A. It would not be surprising if she swore at me.

Q. Did you file an Equal Employment Opportunity complaint after she made that comment to you in 2016 -- sorry -- in 2015?

A. What would be the scope of that EEO?

Q. I'm just asking if you did.

A. No.

MR. CROSSETT: Objection. His testimony was the fall of '16 not '15.

MS. FINKELSTEIN:

Q. Okay. Sorry. I misstated the date.

Did you file an Equal Employment Opportunity complaint after Ms. Wright made that comment to you in the fall of 2016?

A. No.

Q. Did you complain to anyone else in management after she made that comment to you in the fall of 2016?

A. About her comment or about the situation?

Q. Either.

[113] A. I did not. I don't remember. If you call it a complaint, I did mention my motivation for moving to Holtwood being as a result of her -- what's the word for it? Ultimatum.

Q. Who did you mention that to?

A. I believe it would have been Brian Hess to confirm that Holtwood was exempt from Amazon Sunday delivery at that point.

Q. Did you report the situation to anybody other than Brian Hess back in the fall of 2016?

A. I'm sure in that casual conversation with other postal employees that I mentioned that I was having this dilemma.

Q. What about to anybody in management? Did you ever report it?

A. I don't remember if we had a supervisor at that point. Roger Sheddy eventually became a supervisor. His testimony this week would establish a timeline of when he was there and wasn't. But it's possible that if he was there, I would have spoken to him about it.

Q. Anybody else other than Mr. Hess and Mr. Sheddy?

A. In management, I don't recall anyone else.

[114] Q. Did you get any resolution of the situation when you spoke to Mr. Hess or Mr. Sheddy?

A. The only resolution that I -- they didn't offer any resolution. That's why I had to decide to move to Holtwood.

Q. Why didn't you leave the post office at that point?

A. Because I wanted to have a -- my ultimate goal was to remain a postal employee to retirement and get the government pension and benefits of a full-time worker.

Q. At that point you were not a full-time career employee, however?

A. True.

MR. CROSSETT: Can we take a break?

(A recess was taken from 11:42 until 11:54 a.m.)

BY MS. FINKELSTEIN:

Q. So we're back on the record after a break.

Is there anything that you need to correct or change about any of your prior answers?

A. I don't recall anything I need to at this point.

Q. So let me show you what I'm marking as

* * *

[127] Q. And you didn't view your anxiety, stress and depression as physical or medical issues?

MR. CROSSETT: Object to the form.

THE WITNESS: They were medical issues, but at that point, I did not consider FMLA an option.

BY MS. FINKELSTEIN:

Q. I'm going to show what I'm marking as Exhibit 16, bates number USPS 3.

(Exhibit No. 16 marked.)

BY MS. FINKELSTEIN:

Q. This is another Form 50. It says at the bottom under the narrative area, last day and paid status January 18, 2019.

Is that when you stopped working for the United States Postal Service?

A. Yes. I worked that day and at the end of the shift is when I submitted my resignation.

Q. At that time you earned \$22.36 an hour?

A. Correct.

Q. And you were still a rural carrier associate?

A. Yes.

Q. According to this form you resigned.

MR. CROSSETT: Objection to form. You can answer.

[128] THE WITNESS: I had nothing to do with the writing of this form.

BY MS. FINKELSTEIN:

Q. You wouldn't characterize it as resigning?

A. I consider it a constructive discharge.

Q. Do you also consider it a resignation?

A. I believe that I was forced out of the Postal Service, so my resignation was under duress.

Q. So it was a resignation but you characterize it as a resignation under duress?

A. For the sake of answering you, yes.

Q. When you resigned you were still at the Holtwood Postal Office?

MR. CROSSETT: Object to the form.

THE WITNESS: You just put words back in my mouth.

BY MS. FINKELSTEIN:

Q. When you resigned under duress -- let me make sure I understand. You would not characterize it as a resignation?

A. I would like to use the term constructive discharge as a more accurate portrayal of my feelings.

Q. You think if I say the word resigned

* * *

[141] delivering Sunday deliveries?

A. No promise was made.

Q. Nobody ever specifically told you that you would be exempt from delivering on Sundays?

A. No.

Q. There was Sunday delivery in the United States Postal Service before Amazon, correct?

A. What do you mean?

Q. Priority express mail.

A. That was very rare. Never in my seven years as an employee, did anyone I know deliver on Sundays with priority mail.

Q. But it existed?

A. If you say so.

Q. So I want to switch gears and ask you about how things worked at Holtwood once you got there. As I understand it, there are what are called crafts at the United States Postal Service. Do you know that term?

A. Yes.

Q. And craft is, in layman's terms, a way of describing an entire job function?

A. Understood.

Q. There's the carrier craft, everybody who delivers mail; that's one craft?

[142] A. I would characterize it as a rural craft and city craft.

Q. So there's rural carriers is one craft, people who deliver mail in rural areas?

A. Yes.

Q. And there's city carriers, people who deliver mail in city areas?

A. Yes.

Q. And there's clerks, people who are what you might informally call customer service; they work the counter and deal with the customers?

A. Yes.

Q. There's other crafts as well?

A. Yes.

Q. Holtwood was a pretty small office when you got there?

MR. CROSSETT: Object to the form. You can answer.

THE WITNESS: It had three rural routes. If that's your definition of small, I agree with you.

BY MS. FINKELSTEIN:

Q. It was smaller than Quarryville?

A. Yes by definition.

Q. The postmaster was Brian Hess?

A. Yes.

[150] A. That was my home office.

Q. Sometimes you did fill in at other post offices, correct?

A. Correct.

Q. Quarryville?

A. Yes.

Q. Any other post offices?

A. Depends on the time frame that we're talking about.

Q. In between when you came to Holtwood and when Amazon Sundays became part of what Holtwood was responsible for?

A. That's something different, because I thought we were talking from when I left Quarryville until -- that period, like fall 2016 to Christmas 2016, when I started. That's why I'm confused.

Q. You came to the Holtwood Post Office in 2016?

A. August of 2016.

Q. From that time until you separated from the Post Office, that is your home station?

A. Yes.

Q. So I want to talk about the time period between when you were assigned to Holtwood and March 2017. That's the time period we're talking about.

[151] A. We're talking about August 2016 when I started at Holtwood until when?

Q. March 2017.

A. Okay. Please understand I was answering with -- anything I answered up until this point I was confused about the time frame.

Q. Is there anything you would change about the description generally of how delivery worked at Holtwood based on that change to the time frame?

A. As I recall my answer was Holtwood was my home office and I delivered out of Holtwood from 2016 until I finished with the Postal Service.

Q. And you would change that answer how?

A. I wouldn't. I agree with that.

Q. So in that time period that we're talking about, 2016, that time period, even though Holtwood was your home office, sometimes you would fill in at other post offices?

A. Correct.

Q. And you said Quarryville was one of them?

A. Right.

Q. Were there any other others?

A. Quarryville includes the New Providence Post Office. I worked at both regularly.

[152] Q. And other than the combined Quarryville New Providence?

A. I don't recall any other offices.

Q. How did you become aware they needed help in the Quarryville New Providence Post Offices?

A. Generally speaking, one of the members of management, Roger Shetty or Trish Wright, the postmaster would contact me and ask if I was

available either the day of, or if they knew ahead of time, they would ask me in advance.

Q. What did you do when you received one of those queries from either Mr. Shedly or Ms. Wright?

A. If I was in the post office working at Holtwood that day, I would generally run it past Ryan to make sure he wasn't needing me the next day or that day.

Q. Brian being Mr. Hess?

A. Yes. Because he was the postmaster and he may have approved leave that I was not aware of for Holtwood.

Q. What if you were not working in the post office when you received a request from Mr. Shedly or Ms. Wright?

A. If I was under the impression that he did not have any of need this work, I would probably go ahead and accept it. There were times when I accepted [153] work at Quarryville and Brian had an emergency need, he would -- the agreement I had with Trish is that any time Brian needed me back, he could recall me, and he did do that on more than one occasion.

Q. So there were times that you agreed to work in Quarryville without getting approval of the postmaster at Holtwood, Mr. Hess, first?

MR. CROSSETT: Object to the form.

THE WITNESS: I think we had an understanding that I didn't have to clear it past him every time. I was doing it as a courtesy because he was there.

BY MS. FINKELSTEIN:

Q. He was your supervisor, right?

A. Yes.

Q. He was the one making the schedules for Holtwood, correct?

A. Correct.

Q. He knew when the regular carriers were on leave and unavailable to deliver their routes?

A. Right.

Q. So he was the one who knew whether he needed you to fill in?

A. Right. I don't know if he had an informal agreement. My understanding of his attitude was that he didn't mind if I worked other offices [154] without clearing it with him.

Q. You understood that if you went over 40 hours a week you would be paid overtime, correct?

A. Yes.

Q. By working at other post offices, did you create a situation where you ended up being paid overtime?

MR. CROSSETT: Object to the form. You can answer.

THE WITNESS: Could you repeat?

BY MS. FINKELSTEIN:

Q. By working in other post offices, specifically the Quarryville Post Office, did it ever result in a situation where you ended up being paid overtime?

MR. CROSSETT: Object to the form.

THE WITNESS: I would imagine that there were weeks that I worked more than 40 hours and accrued time at Holtwood and another office.

BY MS. FINKELSTEIN:

Q. Over 40 hours would be overtime?

A. Yes.

Q. So do you agree with me that there were times that you ended up getting paid overtime as a result of having worked some hours in the Quarryville [155] and New Providence Post Offices?

MR. CROSSETT: Object to the form.

THE WITNESS: Could you repeat?

BY MS. FINKELSTEIN:

Q. Do you agree with me that there were times where you were paid overtime as a result of you working hours in the Quarryville, New Providence Post Offices?

MR. CROSSETT: Object to the form.

THE WITNESS: My understanding was that if Trish needed help badly enough she was willing to pay overtime.

BY MS. FINKELSTEIN:

Q. Trish needed help because she was short on carriers?

A. That day at least, yeah.

Q. And she wasn't the only one who was short on carriers; sometimes Postmaster Hess was short on carriers too?

A. That's why he would recall me yo cover his needs. So in effect he was never short because if he needed me, I could always go back.

Q. Did you always come into work when Mr. Hess asked or was there ever a day when you said know, I

know you're asking me to come in, but I'm not coming in

* * *

[185] A. That would be my understanding.

Q. Okay. Did you ever put in a leave request to be skipped on Sundays?

MR. CROSSETT: Object to the form. You can answer.

THE WITNESS: I know that when I went to my family vacations, went away for a period of time that would include a weekend, Brian asked me to submit to him a formal leave request. And then he forwarded that on to Lancaster management, whoever that would have been, and then we had to wait for a period of time to hear back whether it was denied or approved.

BY MS. FINKELSTEIN:

Q. What about on other Sundays?

MR. CROSSETT: Object to the form. You can answer.

THE WITNESS: So much of what my experience was with my supervisor Brian was very informal, verbal dialogue or understanding with each other of how this was carried out. Very rarely was I asked in my experience, particularly in 2017, to fill out paperwork like a leave request.

He would come -- starting with the very first time I was put on the Sunday list for non-peak Amazon hub, he came to me and said you're on the list for the [186] first time in March, I guess, it was. I verbally stated to him that I respectfully decline to work on a Sunday. This was probably on a Tuesday. That's when the list

was produced. Let's just say it was a Tuesday or approximately Tuesday for that coming Sunday. I expressed to him verbally that I respectfully decline to work this coming Sunday because of my faith in keeping the Lord's day completely. I have to trust -- at this point I had no interaction whatsoever with Lancaster management. Everything was being done by Brian. He had the list and schedules. He had everything. I had not seen any of these papers you're showing me. It was all him talking to me and me talking to him. So when I would tell him that I have to trust that he took what I said and communicated that to Lancaster, however that happened, telling them well ahead of time, four or five days ahead of time, that I would not be coming on Sunday, which I felt was giving my appropriate, responsible statement that I was calling in, so to speak, four or five days early, and that he was also communicating why I wouldn't be coming there. It was not a matter of anything but my beliefs, my convictions.

I can't say for sure that he did communicate that at all, and then whether he communicated when I said completely, or that -- what he even did after that

* * *

[189] never asked to complete leave slips. It was always a verbal thing. When I worked at Quarryville, I would go to Trish and say, I need off in three weeks from now for my vacation. Is that doable? And because I was asking in advance she would make it happen. So I never had any thought in my mind that I needed to fill out a leave slip. It was always a very informal verbal thing in my entire five years of experience in the post office. I can only speak to Quarryville and Holtwood.

BY MS. FINKELSTEIN:

Q. So before we get into the chronology of what happened, I want to make sure that I understand sort of the outer limits of your knowledge.

You never worked for the United States Postal Service on a Sunday?

A. Correct.

Q. Even if you were scheduled?

A. I have never worked on a Sunday.

Q. So if we see you as being scheduled on a Sunday, we can assume that, although you were scheduled, you did not work?

A. Correct.

Q. Sitting here today, can you list out all of the days that you were scheduled to work on a Sunday?

A. No. Not even close.

* * *

[205] was, in his words, communicating what I said to him verbally. I can't remember what I said to him verbally, so these words are his, not mine. But it's the spirit of what I said to him.

Q. Was it the spirit of what you said you were willing to fight for what you believed?

A. I don't remember using that word.

Q. Did you understand that you could be disciplined if you were scheduled on Sunday and you didn't work?

A. I assume that that would be the case.

Q. And you didn't work on March 19, 2017, correct?

A. If that's a Sunday then, no, I didn't work.

Q. You received no discipline?

A. I wouldn't know if that was one of the dates that was included in the first discipline or not. I don't remember.

Q. Let's keep a running list of the dates.

The first date that you were scheduled was March 19, 2017.

Did Mr. Hess let you know that he had spoken with management and you were not excused from failing to work on Sundays when you were scheduled?

* * *

[209] tomorrow at 8:00 a.m. for a PDI. PDI in postal speak is a pre-disciplinary interview?

A. Yes.

Q. Before you're issued any corrective discipline, you get a pre-disciplinary interview?

A. That's the practice.

Q. You are asked questions and you get an opportunity to explain what happened, and based on what's discussed in the pre-disciplinary interview, a corrective action could be issued or not?

A. You're asked questions and you are given an opportunity to answer the questions.

Q. You could have a union representative present during a pre-disciplinary interview?

A. True. As a silent witness.

Q. And this is based on you not showing up on April 2nd, 2017, is that correct, according to what this e-mail says?

A. Is that what it means by no form 3971 form 217? I don't see it spelled out in this e-mail.

Q. Look at the subject line.

A. My assumption is that says that is that, yes, this PDI was in response to that.

Q. Your first pre-disciplinary interview was with Aaron Zehring, correct?

* * *

[211] to him that Sunday is the accepted day of worship and rest in the Christian faith, as I know it, and has been that way since the time of Christ 2,000 years ago. To try to substitute another day of the week for that just isn't the same. I would not consider that a reasonable accommodation because I would be missing out on church service and the time I spend with my family on Sunday.

Q. So I understand that you didn't view that as being an appropriate accommodation, but did you understand that was being offered to you whether or not you felt it was reasonable or not?

MR. CROSSETT: Object to the form.

THE WITNESS: I understand that he asked me about it. I don't understand -- he did not turn around and say anything after that, as far as making an offer.

BY MS. FINKELSTEIN:

Q. You wanted some kind of formal offer of accommodation?

A. I expected there to be.

Q. Why, when you told me a few minutes ago that time off and scheduling was handled informally in

your experience. Why did you expect something formal now?

A. My experience is it was handled informally with Brian. That was my first time ever

* * *

[227] take another day as the Sabbath or to come in later after church?

A. I believe I testified previously that that was the case.

Q. Now, among other things at the bottom you say you want full restoration of any lost pay, benefits, promotion opportunities and related details.

As of June 2017, what pay had you lost?

A. I think I was anticipating further discipline and I was just building that into the EEO. That was my own assumptions.

Q. But you hadn't lost any pay by June 2017?

A. No.

Q. What benefits had you lost by June 2017?

A. Again, I was anticipating.

Q. What promotional opportunity had you lost by June of 2017?

A. I'm not aware of any.

Q. If you look at the second page on the top under anonymity, you indicated that you wanted to remain anonymous, correct?

A. Yes.

Q. Why?

[228] A. It was just generally considered safer to remain anonymous for fear of reprisal at the workplace.

Q. And it looks like at the time you filed this EEO, you initiated this EEO action, you already were represented by an attorney and it's the same attorney that's defending you in today's deposition?

A. Correct.

Q. So that was June of 2017. You had a pre-disciplinary interview with Treva Morris on July 3rd, 2017, correct?

A. That sounds right.

Q. And she explained to you that if you continued not to come in when you were scheduled that you could experience additional corrective action?

A. I can't remember that she said that.

Q. Let me show you what I'm marking as Exhibit 33.

(Exhibit No. 33 marked.)

BY MS. FINKELSTEIN:

Q. USPS 1699 through 1700. They are notes from the pre-disciplinary interview between Ms. Morris and yourself.

Do you recall that Ms. Morris discussed when your church services started and where you went to

* * *

[230] you were receiving a second pre-disciplinary interview that you could be subjected to corrective action if you continued to be scheduled on Sunday and not to show up to work on Sundays?

MR. CROSSETT: Object to the form. You can answer.

THE WITNESS: Do you mean I understood that legally they could do it?

BY MS. FINKELSTEIN:

Q. I'm never asking you for a legal conclusion. I'm trying to understand what you derived from the discussions that you had with management when they were bringing you in for a PDI and giving you corrective actions. Did you understand that they could continue to issue corrective actions if you continued to be scheduled on Sundays and not show up?

A. When you are going to a pre-disciplinary interview, it's safe to assume that discipline could potentially happen.

Q. You had another pre-disciplinary interview on October 3rd, 2017 with Diane Evans, correct?

A. I assume that to be true.

Q. So by the time you had that pre-disciplinary interview on October 3rd, 2017 with

* * *

[236] Q. Was Brian the one issuing corrective actions during this time period, which was non-peak season?

A. The paperwork was issued by Lancaster. Brian is the one who served me the paperwork, so he was the face of the discipline.

Q. But he hasn't done a single one of the pre-disciplinary interviews to this point?

A. No.

Q. And he wasn't the one whose name appeared as the one who had written you your letter of warning, is he? Mr. Hess gave you the letter but it was written up by Diane Evans, correct?

A. Correct. But you have to understand he's the one I interacted with face-to-face. He was the face of the discipline and the postal management to me.

Q. Now it looks like I'm going to show you what I'm marking as Exhibit 34.

(Exhibit No. 34 marked.)

BY MS. FINKELSTEIN:

Q. Bates number 1731 to 1732. It looks like the Postal Service, in September of 2017, did formalize a reasonable accommodation offer by sending a letter to your attorney, in which the Postal Service offered to let you report to work after the conclusion [237] of your religious services and agreed not to schedule you before 12:00 p.m.

MR. CROSSETT: I didn't hear the question. Can you repeat it?

BY MS. FINKELSTEIN:

Q. September 19th, 2017, did the Postal Service formalize its offer to allow you to come in to work on Sundays after your religious services were completed, not before 12:00 p.m.?

A. If you can just give me a moment to read this document. In the first paragraph, the USPS has offered to permit Mr. Groff to report to work after the conclusion of religious services on the Sundays he's scheduled to work, not to exceed 12:00.

Q. And through your attorney you declined that offer?

A. Correct.

Q. But you agree with me that the Postal Service did make that offer to you?

A. Yes.

Q. They made it in a formalized way as well?

A. If it was through my attorney, that was fairly formal, in my opinion.

(Exhibit No. 35 marked.)

* * *

[244] photographs?

A. Yes.

Q. So in November of 2017, we entered into the peak period where Holtwood decoupled from the Lancaster annex?

A. That would be the usual, yes.

Q. And when this happened in 2017, Mr. Hess told you in advance what Sundays he was going to be scheduling you?

A. Correct.

Q. And that included, as we stipulated to, December 3rd and December 17th, as well as December 14th, correct?

A. Yes.

Q. And you didn't work any of those days?

A. Correct.

Q. So if my numbers are correct, we've stipulated that in 2017, between March and the end of the year in December, you were scheduled for 16 Sundays, correct?

A. According to what you guys agreed.

Q. So 16 is bigger than ten, yes?

MR. CROSSETT: We'll stipulate to that.

BY MS. FINKELSTEIN:

Q. You didn't work any of them?

[245] A. True.

Q. So now I want to turn to 2018. In 2018, you, for the first time, received a seven-day paper suspension?

A. Yes.

Q. I'm showing you Exhibit 37.

(Exhibit No. 37 marked.)

BY MS. FINKELSTEIN:

Q. Bates 1927 through 1928, this is the seven-day paper suspension that you received?

A. Yes.

Q. By that time we're in agreement that you had actually missed 16 Sundays, correct?

A. Yes.

Q. However, this seven-day suspension only lists December 3rd and December 17th, 2017, correct?

A. True.

Q. This was given to you by Mr. Hess on January 16th, 2018?

A. That's when I signed it, yes.

Q. And that's the day you signed it was the date that it was given to you?

A. Yes.

Q. Now, Mr. Hess asked you to please provide a written request for a reasonable accommodation

* * *

[251] Whose handwriting is this?

A. Mine.

Q. So I'm only asking for any of these terms as you understood them to be defined when you wrote this.

Had you yet spent any money on attorney's and fees and costs when you wrote this?

MR. CROSSETT: Object to the form.

THE WITNESS: I don't know.

BY MS. FINKELSTEIN:

Q. Had you lost any income when you wrote this?

A. I don't know what to say.

Q. Did the seven-day paper suspension only on paper cause you to lose any pay?

A. No.

Q. Had you lost income in some way as a result of what was happening at the Postal Service?

MR. CROSSETT: Object to the form.

THE WITNESS: I don't know if I missed opportunities or not. By this point the postmasters were telling me they weren't sure I was with the Post Office anymore so they weren't calling me.

BY MS. FINKELSTEIN:

Q. What postmaster called you before?

[252] A. You know from previous testimony that I worked at Quarryville.

Q. Ms. Wright?

A. Yes.

Q. Any others?

A. I don't know if they were not calling me or not.

Q. Did any others call you before?

A. There was always calls. Whether I was available or not is a case-by-case basis.

Q. Can you name for me any postmasters who called you and you were told that you didn't work there, and as a result of those postmasters being told that you didn't work there, they did not offer you opportunities to work?

A. I couldn't remember all of them.

Q. We looked at your W2s. There wasn't a significant difference in your income over the prior years?

A. At some point we're talking about 2018. Justin transferred to Strasburg and Sheila resigned from the Postal Service, so I was only the sub for Holtwood most of the year.

Q. And you got lots of hours?

A. That year.

* * *

[274] Q. It's dated October 5th, 2018 but you received it on October 12th, 2018, correct?

A. Correct.

Q. That was the last corrective action that you received from the United States Postal Service before you separated in January of 2018?

A. True.

Q. So by that time you had missed, in 2018, eight different Sundays on which you were scheduled, and you didn't receive the 14-day paper suspension until October 5th, 2018?

A. Yes. But I'll draw your attention to the inconsistency of that, because the first one is in June, and the last two in August. So I had no way of knowing how many Sundays were being included before I got another discipline.

Q. But we're in agreement that you missed many more than three by the time you received this paper suspension, regardless of which ones you chose to include in the list they put in the suspension?

A. The numbers agreed on speak for themselves.

Q. Eight, right?

A. Yeah.

Q. That's more than three?

* * *

[311] any of the three full-time career carriers at Holtwood are going to retire or have a health impact that causes them to leave the job at Holtwood?

A. My understanding was it was sooner rather than later.

Q. But none of us know when?

A. No.

Q. I understand that you're seeking damages for emotional distress, and you're seeking the maximum amount that you're allowed to.

Tell me why you think your emotional distress that you suffered is equivalent to the maximum amount that you're allowed to recover under the law?

MR. CROSSETT: Object to the form. You can answer.

THE WITNESS: I don't know how you put a dollar amount on emotional distress. As I told you earlier in my testimony, when Brian made that comment shortly after my letter of warning, which would have been in the summer of 2017, that struck me to the core. Any time I anticipated the Post Office could quickly move to termination, so I lived every day under a cloud of misery or anxiety, stress, fear, whatever you would like to say to describe that, that at any day, if I report to work today, Brian could come to me and say, [312] they decided to terminate you. That's the way he delivered the discipline. He waited until I came in and until I finished my shift and gave me the paperwork to sign. And I never knew if today was the day. Like I said earlier, we have the luxury of hindsight looking back and seeing in reality there was time between each discipline, but I didn't know that. For me, every day was painful. Every day was stressful, from March 2017 all the way to January 20th.

BY MS. FINKELSTEIN:

Q. You cared that much for you job as a rural carrier associate?

A. I saw it as the death of my career and also the loss of my livelihood and the loss of potential of a government pension, of the 401K with matching benefits as a union protected job with a security of knowing that your job is relatively safe for the next length of my career.

Q. But you hadn't yet gotten a full-time career position that would entitle you to a pension or a 401K by the time you separated from the Postal Service?

A. But there's a system in place that creates an expectation that if someone does retire, because I was the senior RCA by the time of my leaving the Post Office, that whoever did leave, would be --

* * *

[314] something that you were so worried about losing?

A. Because I had been there for seven years or so. I had time invested. I had expectations that it could be a career that would provide for me. I just didn't want to lose my job.

Q. You said that you gained weight as a result of the stress and anxiety?

A. Yes.

Q. How much did you gain?

A. As I remember, before this started, I weight about 215 pounds. I went up to close to 240 pounds.

Q. Over what period of time?

A. I don't know how long it took to add weight. I'm saying from the beginning to the end.

Q. Is that from March 2017 until you separated from the Postal Service or not through that entire time period or to the present?

A. I'm really not sure.

Q. Was it while you were working at the Post Office that you think you gained the weight?

A. Yes.

Q. Did you have any other health issues other than gaining weight?

A. This is embarrassing, but I had a [315] fairly full head of hair, and at this point I lost quite a bit of it.

Q. Did you ever see a doctor to diagnose the cause of the weight gain or hair loss?

A. No.

Q. Are you aware that there are other reasons other than stress that people gain weight and lose their hair?

A. It's possible.

Q. What about insomnia? Did you have insomnia?

A. Yes.

Q. What time period?

A. The whole time.

Q. The whole time from March 2017 until you separated from the Postal Service?

A. Yes.

Q. Did you ever have insomnia prior to that time period?

A. Not like that; not like I did after.

Q. But you had insomnia to some degree previously?

A. Everyone has nights where they have trouble falling asleep. But it wasn't a consistent problem until after I began to worry about the Sundays

* * *

[318] Q. When you first began to believe that you were going to be terminated from the Postal Service, why didn't you just look for another job starting right then even while you're still employed?

A. Because I didn't feel that I should have to. I felt that I should be reasonably accommodated and allowed to keep my job.

Q. You don't think it would have made you feel better to know that you had another job lined up if you did get terminated?

A. I didn't think that the Post Office was going to follow through with termination. I had every expectation they were going to follow the law and accommodate my faith.

Q. You were stressed because you thought they were going to terminate you, but you didn't think they actually were going to terminate you?

A. I hoped they would accommodate me. It doesn't take away the fear I had that they wouldn't.

Q. So I guess I'm not understanding why to alleviate that fear you didn't start putting feelers out for other possible job opportunities?

A. Because I felt that my job at the Postal Service was where I was supposed to be. It was a place that God had put me to work for the time being

* * *

[331] that in 2016 and '17 and '18 until you became a career employee?

MS. FINKELSTEIN: Objection.

THE WITNESS: Yeah.

MR. CROSSETT: What's the objection?

MS. FINKELSTEIN: Characterizes that that's -- that system worked. I think the evidence is actually the contrary. The system did not work. It was also pre-Amazon delivery, so it was not consistent with the memorandum of understanding.

THE WITNESS: It wasn't pre-Amazon delivery.

MS. FINKELSTEIN: It was prior to the memorandum of understanding, which was March of 2016.

MR. CROSSETT: Objection noted. You can answer.

BY MR. CROSSETT:

Q. My characterization was that Christmas of 2015 you weren't scheduled Sundays and in exchange you worked other days more where Ms. Wright asked you to.

Would you be willing to continue to do that?

A. That arrangement worked well for me.

Q. Would you be willing to do that indefinitely until you became a career employee?

A. Yeah.

* * *

[324] BY MR. CROSSETT:

Q. You were asked questions earlier about your work before starting at the Postal Service and how you had periods of work and mission trips. And I just want to clarify, in 2017 and 2018, when you were working at the Postal Service, was it your intent and hope to make the Postal Service a career?

A. Yes.

Q. Did you have any plans to leave the Postal Service and go and do mission work at that point?

A. No.

Q. Is it fair to say that your employment job history before the USPS was sporadic where you would take unpaid times to do missions, you didn't have any affirmative plans to do that going forward once you started working for the USPS in 2015, '16, '17; is that fair?

A. Yes.

Q. I want to go a little more into the conversation that you had in the fall of 2016 with Trish Wright. I believe you testified earlier that in the fall of 2016 she told you, I'm not going to put up with this S-H-I-T again this year.

Did she actually spell or did she say the word?

[325] A. I was just trying to be polite; she said the word.

Q. When she said putting up with this shit, what did you understand that to mean?

A. Accommodating me for Christmas the way they had in 2018.

Q. You are referring back to 2015 where she allowed you to work during the week and gave you more work during the week and in exchange you didn't work on Sundays; is that right?

A. Yes. I don't remember the context but that's what I understand.

Q. After she said that, did you testify that she said something along the lines of you need to either transfer or work on Sunday or do you recall what else she said?

A. To the best of my recollection, she said you need to find another job or expect to work Sundays.

Q. How did you feel when she told you that?

A. Terrified.

Q. Of what?

A. My responsibility to find another job that quickly or be fired.

* * *

[327] Zehring. And your testimony was during that conversation he brought up the idea of you taking another day off during the week to take your day of rest rather than taking Sunday off.

Do you recall that testimony?

A. Yes.

Q. You testified about the idea of a casual conversation and formality, or lack of formality. Can you contrast the casualness of that with the formality of something else? Is there anything that you were contrasting that with or is there something less or more formal?

A. I meant that later in the process I received a letter from Lyle Gains that I understood to be a more formal reasonable offer of accommodation.

Q. When Mr. Zehring brought up the idea of taking another day off, would taking a Tuesday off, for example, would that be something that you can do and in good conscience?

A. No.

Q. Did you explain that to Mr. Zehring?

A. Yes.

Q. So right then and there, if he said, I will give you every single Tuesday off, could you have taken it in good conscience?

* * *

[331] that in 2016 and '17 and '18 until you became a career employee?

MS. FINKELSTEIN: Objection.

THE WITNESS: Yeah.

MR. CROSSETT: What's the objection?

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A. That arrangement worked well for me.

Q. Would you be willing to do that indefinitely until you became a career employee?

A. Yeah.

* * *

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[1] IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

NO. 19-CV-1879

GERALD E. GROFF,

PLAINTIFF

v.

MEGAN J. BRENNAN, POSTMASTER GENERAL,
UNITED STATES POSTAL SERVICE,

DEFENDANTS

DEPOSITION OF: DIANE EVANS

TAKEN BY: PLAINTIFF

BEFORE: LORRAINE C. FRICK, REPORTER,
NOTARY PUBLIC

DATE: DECEMBER 17, 2019, 9:20 A.M.

PLACE: 356 GAS AVENUE
YORK, PENNSYLVANIA

APPEARANCES:

CHURCH STATE COUNCIL
BY: ALAN J. REINACH, ESQUIRE

FOR -- PLAINTIFF

CORNERSTONE LAW FIRM
BY: DAVID CROSSETT, ESQUIRE

FOR -- PLAINTIFF

[2] APPEARANCES: (CONTINUED)

UNITED STATES DEPARTMENT OF JUSTICE

BY: VERONICA J. FINKELSTEIN, ESQUIRE

BY: LAUREN DEBRUICKER, ESQUIRE (VIA TELEPHONE)

FOR - DEFENDANT UNITED STATES POSTAL SERVICE

ALSO PRESENT:

GERALD E. GROFF
EMILY WOOD, PARALEGAL
KATORA HAWKINS

[3] WITNESSES

Name	Direct	Cross	REDIRECT	RECROSS
DIANE EVANS				
BY: MR. REINACH	4	--	44	--
BY: MS. FINKELSTEIN	--	40	--	--

[4] STIPULATION

It is hereby stipulated by and between counsel for the respective parties that sealing, certification and filing are hereby waived; and that all objections except as to the form of the question are reserved until the time of trial.

DIANE EVANS, called as a witness, being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. REINACH:

Q Would you please state your full name for the record.

A Diane Evans.

Q Thank you, Ms. Evans. My name is Alan Reinach. I'm one of the attorneys representing Gerald Groff in his lawsuit against the US Postal Service, and I very much appreciate your opening your home to us today. Sorry for the intrusion.

A It's okay.

Q And we'll try to make this as painless as possible.

A Hum-hum.

Q There's several ground rules, but probably the most important one is that this is not prison. At any point if you need a break, if the baby needs a break, just let us know. My only request is that if there's a question pending, if at all possible baby permitting that you answer the question before we take a break.

A Okay.

* * *

[13] BY MR. REINACH:

Q -- for the Amazon scheduling.

A I don't remember an exact date, but once -- I know that I did -- I took over scheduling, but I'm not sure of an exact date as to when that happened.

Q So one of the ground rules that we haven't talked about is the difference between estimating and guessing so I definitely don't want you to guess. If you don't know, perfectly fine to say so, but if you can estimate, I'm entitled to your best estimate. So looking at 2016, do you believe that you began scheduling the Sunday Amazon before peek season?

A Yes.

Q Okay. So do you recall when in 2016 peek season began?

A That would have been the end of November, beginning of December is normally when peek season began.

Q Do you recall roughly how long before peek season you began responsibilities for scheduling Amazon?

A No.

Q Okay. That's fine.

MR. REINACH: Off the record a moment.

(Discussion held off the record.)

BY MR. REINACH:

Q So when you began scheduling Amazon delivery, was it just Sundays or was it the rest of the week as well?

[14] A No, it was just Sundays and holidays.

Q So who did -- I guess the scheduling the rest of the week was just the normal -- everybody's normal schedule?

A Yes, or other supervisor because it wasn't Amazon during the week, only if it was a holiday.

Q So when you started in Lancaster, did you have any difficulty getting enough people to actually show up and deliver packages on Sundays?

A Yes.

Q So can you explain what your experience was in trying to properly staff Sunday Amazon delivery.

A It was people did not want to work on Sundays so carriers were resigning when it came time to come on Sundays. There were a lot of RCAs that resigned.

Q So prior to implementing Sunday delivery, RCAs didn't have to work on Sundays; right?

A No.

Q But at the time that you started scheduling at Lancaster they had already been doing Sunday Amazon delivery there; right?

A Yes, I was actually the one that started doing the Sunday Amazon in Lancaster when it very first started.

Q So it first started in 2016?

A It first started was it 2015 I believe because it was before I was a regular supervisor.

[15] Q I see. And so in 2015 when it started, were you doing the scheduling?

A I don't remember.

Q So when you say that a lot of RCAs resigned, was that in 2015?

A No, no. No, it was probably 2016.

Q And so how many is that, how many is a lot, how many resigned?

A I don't know exactly how many.

Q Did you think it was more or less than 10?

A I would say probably more than 10.

Q Do you think it was more than 20?

A I don't know but I don't think so.

Q So did they resign, you know, all at once or over a period of time?

A No, over a period of time.

Q And do you know that they were resigning because they didn't want to deliver on Sundays?

A Some, yes.

Q But you don't know that about all of them.

A No.

Q Did some of them tell you that they didn't want to work on Sundays so they were resigning?

A Yes.

Q So with resignations of RCAS, did that make it more [16] challenging to schedule the Sunday Amazon delivery?

A Yes.

Q Were you able to get the packages delivered each week?

A Eventually.

Q What do you mean eventually.

A After possibly being there for 15, 16 hours, then, yes, packages would be delivered.

Q On Sunday.

A Yes.

Q Now, we're still talking 2016.

A Yes.

Q And why would it take 15 or 16 hours?

A That was for me to be there the whatever, 15, 16 hours. I would go in in the morning and make sure

distribution and everything was going and was getting done.

Q And what time would you go in?

A About 4 a.m., 6 a.m.

Q And then the packages would go out. The carriers were called in at what, 10 a.m.?

A At the time -- in the beginning I believe it was 8:30, and then it ended up changing because we were getting more and more.

Q You were getting more and more packages?

A Yes, and trucks weren't arriving on time.

Q When you say trucks weren't arriving, Amazon trucks

* * *

[21] that they knew, but every week we did not have - - we did not have carriers come from Quarryville every week due to the way that the scheduling was done. So every week we wouldn't have somebody from Quarryville. We might have somebody from Strasburg instead, and we might have a carrier from Strasburg deliver the packages to Quarryville.

Q I see. That helps. And is that because every one was on a rotating schedule?

A Yes.

MR. REINACH: You guys have your binders, yes, that we gave you yesterday.

MS. FINKELSTEIN: Yes. The Hess 1?

MR. REINACH: Yes, correct.

MS. FINKELSTEIN: Yes.

MS. REINACH: So you've got the actual exhibit, David.

MR. CROSSETT: I do.

MS. REINACH: So this is page 1901.

MS. FINKELSTEIN: Of Hess 1.

MR. REINACH: Of Hess 1. Okay. So we've directed the witness to the document that's -- the binder that's been marked into evidence as Hess Exhibit 1, collection of e-mails and other documents, and this is page bate numbered USPS 1901. And it is some kind of list for the date Sunday, January 14, 2018.

BY MR. REINACH:

Q So for starters, at this time, Ms. Evans, you were [22] still scheduling the Sunday Amazon delivery in Lancaster, were you not?

A Yes.

Q And can you tell me what this list is.

A It's a schedule for the Sunday Amazon of the RCAs.

Q And the shaded portion, what does that represent?

A That means that they were working.

Q That they were scheduled to work.

A Scheduled to work.

Q And, for example, Michelle Beattie at the top, it indicates that she was on leave that weekend?

A Yes.

Q So does this represent the complete list of RCAs who were available to do Sunday Amazon delivery at that time?

A Yes.

Q And did this list fluctuate from week to week, month to month as far as the number of who was available?

A Yes.

Q Do you have a sense of how often a particular RCA would have to work on Sundays if they were on the list where they were not volunteering to work on Sundays.

A It would all depend on the rotation. If carriers were on leave, it would all depend and how many we had at the time.

Q Well, looking at the list, it looks to me like there's more working than not working.

[23] A Hum-hum.

Q So it looks to me like they're probably working at least every other Sunday and sometimes maybe two, even two out of three Sundays.

A Correct, at times, yes, and then there could be other times to where they might only end up being scheduled once a month so it would all depend on the rotation and things along those lines.

Q So if we examined all the schedules for the year we could probably figure out about how many times a year someone was scheduled to work.

A Possibly. I mean, like I said it still all depends on leave. It all depends on if they had leave that was approved. It all depends, you know.

Q Sure.

A There's a lot of different variables that would go into it.

Q And so if someone called in sick on a Saturday, said I can't come in the next day because I've got the flu, how would you handle that?

A I would mark them down as calling out.

Q But how would you handle getting the packages delivered?

A A route might have to be split or I always would attempt to call other carriers to try to get them to come in to [24] cover that route.

Q Now, looking at this list, we took Brian Hess's testimony yesterday so he gave us some good information about how this works. The volunteer RCAs are the ones who said they're willing to work every Sunday; right?

A Yes.

Q And then the next -- the long list are those who signed that they did not want to have to work every Sunday.

A Correct.

Q But that didn't mean that they weren't willing to work on Sundays. They just didn't want to have to work every Sunday; right?

A Right.

Q Okay. Now, did RCAs have any seniority rights with respect to working on Sundays?

A What do you mean.

Q Well, did seniority govern how you decided who would work on Sundays?

A No.

Q Everyone was just on a rotation.

A Correct.

Q So no one had more or less of a right to have Sunday off than someone else.

A No.

Q And at the same time no one had more or less of a [25] right to work Sunday.

A Unless they were a volunteer.

Q So if they wanted to they could work.

A Yes.

Q On occasions that you had to split packages, I'm not sure I'm saying it right, but you would divide a route and give the packages to other carriers?

A Yes.

Q Would that make their route go longer?

A Yes.

Q So how much longer -- if someone had packages added because their route was split, did they have to work very long. I mean how much longer.

A It would all depend on how many people we had and how many packages needed to be split.

Q Do you know whether the postal service had to pay overtime often to get packages delivered on Sundays?

A I'm pretty sure they did.

Q So RCAs typically worked only a couple of days a week; right?

A I don't know about their offices. I don't know about the other offices how often they worked.

Q Now, at some point you learned that the Plaintiff in this case Gerald Groff didn't want to work on Sundays; right?

A Yes.

[26] Q Did you learn why he didn't work on Sundays?

A I found out after I believe it was Aaron did a PDI with him. I didn't know anything prior to that.

Q And what did you learn about why Mr. Groff did not work Sundays?

A Just that he was refusing to work Sundays is all they told me at that time.

Q They didn't tell you why?

A Not at the moment, no, not then they didn't, no.

Q At some point did you learn why?

A Yes.

Q What did you find out?

A It was when I did a PDI with Mr. Groff.

Q And what did you discuss at the PDI with Mr. Groff.

A That's when he told me about that he won't work on Sundays due to it being the sabbath day and that's why he wouldn't call either.

Q He told you he wouldn't call?

A Yes.

Q He wouldn't call on Sunday.

A Correct.

Q But he would call before Sunday.

A Me and him, after the PDI we discussed and I was like can you just give me a call on Saturday then so this way I know and you're not being marked down as a no call, no show.

[27] Q So what did you do -- so at some point you learned that he wasn't coming on Sunday.

A Yes.

Q And so how did you handle the scheduling at that point.

A We would schedule extra people, extra carriers or try to call carriers in because we got a call out and then we would have then been short staffed again.

Q So did you wait until you got a call from him on Saturday or to try to schedule someone else or you knew in advance and would schedule before Saturday.

A When I would do the schedule, I would -- once I found out, then that's when I would schedule an extra person.

Q And you found out when you did the PDI with him.

A Yes.

Q Do you recall the first time you did -- you did more than one PDI with him; correct?

A I think so.

Q Do you recall the date of your first PDI?

A No, I don't.

Q Do you recall whether it was in 2017?

A I think so. I'm pretty sure it was 2017.

Q If I were to tell you --

A Or was it in 2018.

Q -- that our records show it was August 9 of -- I'm
[28] sorry.

A I think it was May.

Q May. May 10 of 2017 is what --

A Okay.

Q -- we have in the record here.

A Yeah.

Q Does that sound about right?

A That sounds about right, yes.

Q So after May of 2017, you knew that Mr. Groff
wasn't going to be coming on Sundays.

A Yes.

Q And so you did what you had to do to get
coverage.

A Yes.

Q And did you continue to get coverage knowing
that Mr. Groff wasn't coming in on Sundays for the
duration of your time scheduling when you were at
Lancaster?

A For the most -- repeat that.

Q Well, what I'm trying to get at is whether your
scheduling practice was consistent until you left your
scheduling duties or if you changed your practice as

far as how you scheduled Sundays knowing that Mr. Groff wouldn't work.

A No, I mean, we kept it the same. I was scheduling extra but then if people called out then it still left us short.

Q I understand. Now, when people call out, there are both excused and unexcused absences; right?

[29] A Not really at the post office.

Q Well --

A I mean, if you call out you call out.

Q Okay. So RCAs -- if I understood the testimony yesterday, RCAs don't accrue sick leave.

A Correct.

Q But RCAs get sick like everybody else does; right?

A Yes.

Q So if an RCA is legitimately sick with the flu and can't work on a Sunday, is that going to subject them to discipline?

A Possibly. I mean, I can't say what other offices would do but possibly, yes.

Q Well, I know that you had some involvement in discipline with Mr. Groff. Did you have involvement with discipline of other RCAs?

A Yes.

Q And do you recall that any discipline you were involved in where RCAs were disciplined for attendance where they were, you know, legitimately absent because they were sick.

A I can't say yes or no to that question because I don't know legitimately if they were sick or not so I can't really say yes or no, but if other carriers had called out, then, yes, then they were brought in for PDIs and disciplined possibly depending.

[30] Q Okay. Well, the PDI is designed to find out why they were absent; right?

A Yes.

Q So did the post office on occasion ask people to produce doctor's notes?

A Not for Sundays. For Sundays, no. I mean, I don't know how else to say it.

Q Okay. Did you participate in disciplining other employees besides Mr. Groff for missing Sundays?

A Yes.

Q Do you recall how many?

A No, no.

Q Do you think it was more or less than five?

A It was more than that.

Q Do you think it was more or less than 10?

A More than 10.

Q More than 15?

A I don't know about that but I know it was more than 10.

Q And do you recall whether any of the disciplines that you were involved in -- withdrawn. The first level of discipline, of written discipline is a letter of warning; correct?

A Yes.

Q Do you recall of the disciplines you were involved in [31] how many went beyond the letter of warning?

A I don't know.

Q Do you recall whether any of them besides Mr. Groff got a seven day suspension on account of missing Sundays?

A I don't -- I believe so, but I don't remember off the top of my head.

Q Do you recall whether any of those involved in Sunday deliveries besides Mr. Groff were issued a 14 day suspension?

A I don't know off the top of my head. I would have to go back in my records.

Q So we were talking about the May PDI that you had with Mr. Groff a few minutes ago.

A Hum-hum.

Q Did you ever participate in a meeting with Mr. Groff to discuss what kind of religious accommodation he might need?

A No, I didn't.

Q Were you involved in any discussion or any e-mails about whether such a meeting should take place?

A Not that I remember.

Q So let's go -- oh, great. Okay. Here we go. We're going to take a look at what's been marked previously as Hess Exhibit 2, and so, Ms. Evans, this was marked previously as an exhibit. It bears the bate numbers 164 and 165. This is a letter of warning dated June 9

of 2017. And do you see that your name is listed but not your signature on the second page.

[32] A Correct.

Q So did you have a role in the issuance of this discipline to Mr. Groff?

A I didn't issue it to him.

Q I understand that. But your name is on it.

A Right.

Q So what was your involvement with having this discipline produced.

A That was from when we did the PDI on May 10th.

Q Hum-hum.

A And then this was the result of it. Then he got a letter of warning for attendance.

Q So the dates that are listed here April and May of 2017.

A Yes.

Q He would have been under your supervision and direction for scheduling purposes anyway.

A For those Sundays, yes.

Q Okay. And so is that why your name is on this document?

A Yes.

Q Yesterday we saw a form that Mr. Hess would fill out requesting discipline. Did you request this discipline?

A A lot of times letters of warning were written by the supervisor. Anything above a letter of warning,

then a request [33] would be sent. I don't remember if I actually wrote this one or not or if I sent it up because labor would write the letters of warning as well.

Q Well, so, I mean, looking at the letter here on page one, is that something you wrote or something that labor relations wrote?

A I don't recall because if anything we use almost the same template basically. We might have to go through and change a few things, but I don't remember exactly if I actually wrote this letter or if labor wrote the letter.

Q I see. But your name is on here because you were the supervisor at that time.

A Yes, and I would have been -- if it was sent to labor, then I would have been the one -- if it was sent to labor, then I would have been the one to have filled out the request and sent it to labor.

Q Next to the dates and the hours are the letters in caps ULWOP. Can you tell me what that means?

A Unscheduled LWOP, Leave Without Pay, Unscheduled Leave Without Pay. Sorry. I was still using the acronyms.

Q I know what an LWOP is, but it's better for the record to spell it out. Do you recall doing any PDIs with Mr. Groff after this date?

A I don't remember. I know I did more than one, but I don't know if it was before or after this. More than likely it [34] was after, but I can't -- I don't know for sure.

Q Do you remember if you did three PDIs with him?

A I don't remember.

Q And do you remember what you discussed at any subsequent PDIs with Mr. Groff?

A It would have related in to attendance if that's what he was being brought in for a PDI for. It would have been according to his attendance.

Q But you don't recall what it was?

A I mean, if it was a Sunday, then more than likely it was attendance.

Q Well, and point of fact, you were only supervising him with respect to Sundays; right?

A Right. I mean, it could have been other things as well, missed delivering packages, not following instructions, but Mr. Groff as far as I can remember was attendance.

Q Hum-hum. Do you have any recollection of what his work performance was like?

A No.

MR. REINACH: Let's take a short break.

THE WITNESS: I'm going to get her something to drink.

MR. REINACH: Let's go off the record.

(Break taken from 11:20 a.m. to 11:25 a.m.)

MR. REINACH: Let's go back on the record.

BY MR. REINACH:

[35] Q Okay. Did you ever hear any complaints about Mr. Groff not working on Sundays?

A Complaints from who.

Q From anyone.

A Other employees were a little upset about it.

Q Do you remember anyone in particular?

A I don't remember their names, no. You know, Sundays were just so hectic and crazy that, you know, I just can't remember everything.

Q Did you ever hear of any kind of petition or threatened walk-out on a Sunday?

A No.

Q Were you involved in any discussions about the need to hire more people to work on Sundays?

A Yes, I told them.

Q You told who?

A My superiors that we needed more help.

Q And did you discuss what job categories like hiring more ARCs or hiring more RCAs?

A They knew I was talking about RCAs, and they said that they were trying. They had ads out all over trying to hire, but they just weren't getting qualified people.

Q Do you know did you have any discussion about why they weren't able to recruit qualified people?

A No, I didn't get into any of that.

[36] Q And do you recall the time period, what year, time of year you had any discussions about additional hiring.

A I don't -- I don't remember.

Q But it was while you were at Lancaster?

A Yes.

Q So approximately the 2017 --

A 2018.

Q -- 2018 timeframe; right?

A Yes.

Q And when you say you told your superiors, who in particular?

A It was probably Aaron Zehring or Doug French.

Q Was Doug French postmaster the entire time you were there at Lancaster?

A No.

Q Who was postmaster after Doug French?

A Aaron Zehring was the acting postmaster and then John Brodbeck.

Q Do you recall when Doug French stopped being postmaster?

A No, I don't remember exactly when.

Q Did he take another job with the post office?

A Yes.

Q Do you know where he went?

A Harrisburg.

* * *

[41] A For Sundays or holidays?

Q Yes, did he ever report and work for you?

A Yes, on holidays.

Q But he never worked on any Sunday for you.

A No.

Q Would it have solved the difficulties in delivering packages on holidays if -- let me ask a slightly better question.

If Mr. Groff had always been scheduled to work on a holiday, would that alone, the addition of Mr. Groff have solved the difficulties in getting packages delivered on holidays?

A No.

Q Did you ever speak with anybody in labor relations or human resources about how to handle the fact that Mr. Groff was not going to come and work on Sundays?

A I didn't specifically. I know others have so

Q Okay. Did you ever receive any specific direction from labor resources or human -- I'm sorry. Let me ask the question a little more clearly.

Did you ever receive any specific direction from labor relations or human resources about how to handle the fact that Mr. Groff was not coming to work on Sundays?

A That I was to keep scheduling him.

Q And who do you think told you that?

A If anything it would have been Janette Horn or [42] Mindy -- what was her name -- Kleinfeld or something along those lines.

Q And where did they work?

A At that time Ms. Horn was acting labor relations specialist.

Q And Ms. Kleinfeld?

A She was a labor relations specialist.

Q And then I just have a few more questions. I'm sorry for taking up your time.

A You're fine. She'll settle down in a second.

Q Did Mr. Groff's absence on Sundays in your opinion contribute to morale problems amongst the other RCAs who did report to work on Sundays?

A Yes.

Q In what way.

A Other carriers were just upset that he wasn't working on Sundays when they were. You know, I overheard them talking that it wasn't fair.

Q Did Mr. Groff's absence on Sundays contribute to making your job creating the schedule more complicated, time consuming or difficult?

A Yes.

Q In what way.

A Because I always had to make sure that there was somebody -- at least one other additional person on the schedule [43] if I even had that person. Sometimes we were short going into the day before we even started.

Q Did Mr. Groff's absence on Sundays ever contribute to making it more difficult to get packages timely delivered on a Sunday?

A Yes.

Q In what way.

A Because then routes would have to be split if we didn't have anyone else that, you know, we could get a hold of to come in or if they weren't on the schedule, and then breaking down the routes is something that I would then have to do and have carriers go back out once they came back to deliver more packages of which they were very unhappy with.

Q Did you personally have any sort of negative feelings toward Mr. Groff as a result of his religion?

A Oh, no.

Q Did you ever discriminate against Mr. Groff because of his religion?

A No.

Q Did you ever retaliate against Mr. Groff because of his religion?

A No.

MR. REINACH: Objection. Calls for legal conclusion.

BY MS. FINKELSTEIN:

Q Did you treat Mr. Groff any differently after having [44] the first PDI with him, pre-disciplinary interview where you learned that he had a religious objection to working on Sundays.

A No.

MS. FINKELSTEIN: That's all I have.

REDIRECT EXAMINATION

BY MR. REINACH:

Q Was there a requirement in the Amazon contract to your knowledge that packages had to be delivered by a certain time on Sunday?

MS. FINKELSTEIN: Objection. If you know.

THE WITNESS: No, I don't know that.

BY MR. REINACH:

Q Well, when you were involved in sorting and supervising the delivery of packages, were you aware whether, you know, there were deadlines when

packages had to be at the -- you know, had to be delivered.

A I mean, there was always time restraints because you should be able to deliver the packages within the timeframe that's allotted to do it, but I never had a time as to when they just cut it off.

Q Well, so just for clarity, you know, when you send a package say by Federal Express --

A Hum-hum.

Q -- there's different types of delivery. You can pay for 9 a.m. delivery or 5 p.m. delivery, you know, and sometimes

* * *

[1] IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 19-CV-1879

GERALD E. GROFF,

Plaintiff

vs.

MEGAN J. BRENNAN, POSTMASTER GENERAL,
UNITED STATES POSTAL SERVICE,

Defendants

DEPONENT: DEBORAH ANN GLESS

DATE AND TIME:

Thursday, December 19, 2019
at 1:30 p.m.

LOCATION: United States District Court
504 Hamilton Street Allentown, PA 18101

BERKS COURT REPORTING SERVICE

By: Stacy D. Serba, Notary Public

10 Fox Glen Drive

Sinking Spring, PA 19608

610-678-9984

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[2] APPEARANCES:

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Representing the Defendant

ALSO PRESENT:

Timothy Crossett, Law Clerk
Gerald E. Groff

STIPULATION: It has been stipulated by and between counsel that they waive the sealing of the transcribed testimony by the witness and the filing of the original with the Court, and all objections, except as to form, until the time of trial.

[3] INDEX

WITNESSES

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EXHIBITS

NO.	DESCRIPTION	PAGE
	<i>GLESS 30(b)(6)</i>	
No. 1	30(b)(6) Notice of Deposition	69:20

[4] *DEBORAH ANN GLESS*, having been duly sworn, was examined and testified as follows:

EXAMINATION

BY MR. CROSSETT:

Q. Would you state your name for the record, please?

A. Deborah Ann Gless.

Q. Good afternoon, Miss Gless. My name is David Crossett. We met just a moment ago. I represent -- one of the attorneys representing plaintiff in this matter.

I'm assuming you've had your deposition taken before?

A. Yes, I have.

Q. Okay. A couple ground rules.

A. Okay.

Q. If you need to take a break for any reason, this is not meant to be a test of your endurance to sit and answer question, let us know.

A. Okay.

Q. I will just ask that if there's a question pending, you answer that question before taking a break.

Throughout this deposition, if you don't [5] understand my questions, just let me know, I'll make every effort to make them clear. But if you're not sure what I mean, just let me know. I don't want -- I don't want a guess or speculation from you. So if the question's not clear, we'll do our best to clean it up.

Maybe the most important thing is, you just gave an oath and that oath is the same oath that you would give if you were in front of a jury. So your testimony will be truthful. If you don't know, that's a fine answer, as long as it's the truth.

A. Uh-huh.

Q. I will ask you -- you just responded with an uh-huh, which I understood, but I'll remind you or your attorney will to -- you can nod your head, but make it yes or no or some other verbal response. Makes for a clean transcript. If you're like most people, you will occasionally forget and we'll remind you.

Finally, you will very often anticipate where my questions are going and you'll be wanting to answer them before I even finish. But I ask that you let me finish entirely so we can make a clean record. And I'll give you the same courtesy. Again if you forget, normal conversation, most people wouldn't [6] allow the entire break to happen, I'll ask you do that for the benefit of the court reporter.

MS. DeBRUICKER: Counsel, before we begin, because we have two depositions today, which deposition are we in?

MR. CROSSETT: This is the 30(b)(6).

MS. DeBRUICKER: We had requested that we do the individual deposition.

MR. CROSSETT: I think it makes sense to do this one first.

MS. DeBRUICKER: Okay. I will clarify on the record that this is your deposition as the corporate representative of the Postal Service.

THE WITNESS: Okay.

BY MR. CROSSETT:

Q. Miss Gless, what is your current role or title with the Postal Service?

A. I'm the district manager of Central Pennsylvania.

Q. How long have you held that role?

A. Two and a half years.

Q. So you started when, approximately?

A. Officially in the position, when I was awarded it, would have -- was July 4th in 2017. [7] However, I was detailed in the position prior to that.

Q. When did you first become detailed in the position?

A. I think that was July 14th -- I don't remember.

Q. Can you approximate, was it a year before you were detailed?

A. Approximately nine months earlier to when I was awarded the position.

Q. Okay. So some time approximately in late 2016?

A. Correct.

Q. Does that sound right you?

What are your -- how long have you worked for the Postal Service?

A. About 34 years.

Q. Can you give me a brief rundown of the positions that you've held during that time?

A. I started my career as an RCA. I became a city carrier. I became a -- I went to supervision. I was a manager of customer service. I have been post master several times. I was manager, delivery programs. I was manager, operations program support. And now I'm a district manager.

[8] Q. Your attorney and I mentioned on the record that this is what's known is a 30(b)(6) deposition. So in this deposition I'm going to be asking you questions and your responses will be answering on behalf of the Postal Service. Do you understand that?

A. I do understand that.

Q. And in preparation for this deposition, hopefully you've met with individuals as needed and reviewed documents as needed in order to respond to the questions that were provided, the areas provided. Have you done that?

A. Yes.

Q. Okay. Have you been shown a list of question areas that you were going to be asked about today?

A. Yes.

Q. Okay. And you've spoken with, if you needed to, and reviewed the documents necessary to provide answers to those questions?

A. I have.

Q. Who have you met with?

A. My HR manager.

Q. Who is that?

A. Shawn White. Briefly the manager -- the [9] acting manager of labor.

Q. And who is that?

A. Mindy Kleinfelter, I think it is. She was in the room briefly. And I spoke with Lauren.

Q. Your attorney?

A. Yes.

Q. Okay. Anyone else you spoke with in preparation for today?

A. No.

Q. Did you review any documents in preparation for today?

A. Yes.

Q. Which documents?

A. An e-mail.

Q. Who was it from?

A. I don't know who started it.

Q. Okay. An e-mail chain?

A. Yes.

Q. Who was on the chain?

A. The previous HR manager.

Q. Who was that?

A. Geez, I don't recall her name. She's now the HR manager in Tennessee. Barb Kirchner, actually.

Q. Who else was on that e-mail chain?

[10] A. I believe the -- at that time Brian Hess, the post master. And the e-mail also included some postal law department.

Q. Any other documents you reviewed in preparation for today?

A. Pardon me?

Q. Any other documents you reviewed in preparation for today's 30(b)(6) deposition?

A. I don't believe so.

Q. Did you review--

MS. DeBRUICKER: Have you finished your answer?

THE WITNESS: No, I haven't.

Q. Forgive me.

A. Shawn had pulled up some information, like the employees who were RCAs that were in that facility at that time because she -- I don't have access to that, but she pulled up because one of the questions referred to other RCAs that had worked in that office at that time. So she had gone on line to pull up in the past other RCAs that worked in the office back then. I don't have access to that, so. We did look at that document.

Q. Any other documents that you looked at?

A. No, sir.

[11] Q. Okay. And if I -- my goal was to give you an entire answer. I do not want to cut you off. If I misunderstand an answer break, let me know.

What accommodations were offered by the Postal Service to Gerald Groff?

A. It would -- to my knowledge, it was done -- handled locally. And I don't know the specifics.

Q. You don't know what accommodations were offered by the Postal Service to Mr. Groff?

A. Not particularly to Mr. Groff, no.

Q. Do you know what religious accommodations were offered to mail carriers within the Central Pennsylvania District aside from Mr. Groff?

MS. DeBRUICKER: I'll object to -- assuming this is speaking to your Topic No. 1 --

MR. CROSSETT: It is.

MS. DeBRUICKER: -- of the deposition, we have objected to the scope of this topic. And Miss Gless is prepared to speak to religious accommodations offered in relation to the Amazon Sundays within the Lancaster hub per our correspondence.

MR. CROSSETT: I got your letter.

BY MR. CROSSETT:

Q. My question is, tell me what accommodations [12] you know about -- we'll start with the Lancaster hub. What accommodations are you aware of that the Postal Service offered to employees in the Lancaster hub regarding Sundays?

MS. DeBRUICKER: I'll object to the question to the extent that it is outside the scope of the -- of what we are offering -- what Miss Gless is here to testify about.

She's free to answer. But since it's without -- outside of the scope of what we've agreed as the 30(b)(6) notice, it is not subject to those provisions. She can answer based on her personal knowledge.

A. Could you ask me the question again?

Q. Sure, I want to know what accommodations the Postal Service has offered to employees in the Lancaster hub.

A. I have no knowledge of that.

Q. Did you prepare at all for Question No. 1?

Are you familiar with the questions that we itemized that would be talked about today?

A. That is correct.

Q. Okay. So question No. 1, I'm going to read it to you. Topic No. 1. All religious accommodations provided to mail carriers within the relevant district from the time of plaintiff's hire [13] to the present, including but not limited to all religious accommodations provided to plaintiff.

I think you just told me you had no knowledge of what accommodations were provided to plaintiff. And now you're telling me you don't know what accommodations were provided to anyone else in the Lancaster district. Is that correct?

A. First off, it's not Lancaster district.

Q. Lancaster hub.

A. Okay. So I'm not familiar with the specifics of it. I know there has -- when I went through the folders or looked through those files, there were two people in all of Central Pennsylvania, but specific to the Lancaster hub.

Q. So tell me about those two people in Central Pennsylvania. What do you know about them?

MS. DeBRUICKER: Again, I'll object on the grounds that this is out of the agreed 30(b)(6) scope.

You can answer based on your personal knowledge.

A. My knowledge, there was a mail handler in the Harrisburg plant, Harrisburg processing and distribution center. And then there was a clerk that was in an associate office. Neither of those were [14] Lancaster.

Q. Okay. Tell me what you know about the mail handler in the Harrisburg distribution office.

MS. DeBRUICKER: Same objection.

A. To my knowledge, I believe he -- well, I think -- I believe that one is -- there was two of them. I believe that one is the one that is still in the process. But he had received discipline for not showing up for work. So it was an attendance issue.

Q. Was it -- did he make a religious request -- a request for religious accommodation?

A. He did not make one to me. You know, just looking at the records, that's what I -- that's what I gathered from it was that he had reported or responded he -- his attendance issue was based on that.

Q. Was it a Sunday attendance issue?

A. Correct.

Q. Do you know was he requiring the entire day off or just --

A. I don't know that specifically.

Q. What else do you know about that situation?

A. I don't really know a whole lot about it.

MS. DeBRUICKER: If you don't have personal knowledge --

[15] A. Yeah. I just -- it doesn't reach my level.

Q. Do you know the name of this individual?

A. Not off the top of my head, no.

Q. This is a mail handler, you said, in the Harrisburg distribution office?

A. Correct.

Q. And you believe that this person requested religious accommodation related to Sunday?

A. I believe it was Sunday.

Q. Where in the disciplinary process does that matter lie currently?

MS. DeBRUICKER: Same objection.

You can answer, if you know.

A. I do not know.

Q. Has any discipline been issued?

A. I believe he had discipline issued, correct.

Q. What discipline was issued?

A. That I don't know.

Q. What is the progression of discipline that would be issued in that situation?

A. First, you would have a -- much like any other discipline, you would have a discussion with the employee. Then if they failed to continue--continued to fail to come to work, they would get a letter warning. Then they would receive -- the [16] progression is a

week suspension, if they fail to correct whatever was deficient. And then it would lead to a -- you know, two week suspension. And then depending on the severity, you could jump progressions. But and then it would come to removal.

Q. When you say depending on the severity, you could jump progressions, you mean you could jump perhaps directly to removal without going through the seven and then 14-day process? Is that what you meant?

MS. DeBRUICKER: Again, I'll object to this line of questioning as outside the 30(b)(6) notice.

Again, she's free to answer this based on her personal knowledge.

A. Yeah. That would have to be something egregious.

Q. So for an attendance issue, the progression would be letter of warning, 7-day, 14-day, removal?

A. Correct.

MS. DeBRUICKER: Same objection.

A. Normal.

Q. Do you know who was involved with that situation involving this mail handler in Harrisburg?

[17] A. I do not.

MS. DeBRUICKER: Same objection.

Q. Who is the -- do you know who the -- if you wanted to find out more information about this individual, who would you talk to?

A. My HR manager.

Q. And who was that again?

A. Shawn White.

Q. Is Shawn White involved in the situation?

A. Involved in that--

Q. Yes.

A. -- situation? I don't know when this happened. Shawn is relatively new to the district. The labor manager, Lyle Gaines, would probably be a reference He's -- he would know, probably have a better insight on it. He's been there longer and he has, you know --

Q. What accommodations, if any, have been offered by the Postal Service to this individual who is a mail handler at the Harrisburg distribution office?

MS. DeBRUICKER: Same objection.

You can answer if you know of your personal knowledge.

A. I do not know.

[18] Q. You mentioned there was a second religious accommodation issue in the Central Pennsylvania District involving a clerk, I think you said?

A. I believe it was.

Q. How would you describe that clerk? Was it a clerk, an associate role or how --

MS. DeBRUICKER: Object, I'll let you finish your question.

Q. How would you describe that clerk?

MS. DeBRUICKER: I'll object, again on the basis that this is outside of the agreed scope.

MR. CROSSETT: Before you answer, I just want to know for the record, we have the agreed scope or the notice scope has been Exhibit A, which is attached to

the Notice of Deposition. I am aware of your correspondence where you wanted to limit it. There has been no agreement to limit to it Lancaster. So it is not a fair statement to say there's been an agreed scope to limit it from Central Pennsylvania.

MR. REINACH: I would add to that that my correspondence with Veronica was her defining the district as the Central Pennsylvania District and my agreeing that the scope would be limited to the Central Pennsylvania District.

[19] At no time did we have any agreement about a further limitation. And to spring a letter on us the day before a 30(b)(6) and to try to say we're going to limit it further is not in good faith.

MS. DeBRUICKER: Veronica's objection in her initial letter reflected this scope of our position, I will -- my reference to agreement is what the United States has agreed to produce. I do not mean to represent that you have agreed to that scope. We have not received a response to our latest correspondence.

MR. REINACH: Which we received yesterday.

MS. DeBRUICKER: No. You received it from me Tuesday morning. But it states the same objection that Miss Finkelstein did in her original correspondence.

Like I said, I'm permitting her to answer questions outside of what we have agreed to produce her to. So you are asking her questions and she is answering them. To the extent that they are not responsive, you think you are entitled to more information, we are -- can follow that up appropriately through discovery.

BY MR. CROSSETT:

[20] Q. We were talking about a second religious accommodation scenario in the Central Pennsylvania District that you're aware of. How would you characterize or how would you describe that situation, the people involved, so I can have a handle on it?

MS. DeBRUICKER: To the extent that you know of your personal knowledge.

A. I have no knowledge of that person.

Q. What do you know about it?

A. I just know that it was -- it appeared to be to me that it was a religious request.

Q. Where is this person located?

A. It's an associate office. I've never even been to the associate office. It's a smaller associate office, to my knowledge.

Q. Is that in a particular location?

A. That I could not tell you. I can tell you how far we go.

Q. When you say associate office, I don't know what you mean by that.

A. We have city offices. Lancaster is a city office. And it depends on the locality. When you get in to an associate office, it is usually further out from a city, in an actual designated city. So [21] you have Lancaster city, Harrisburg city, those are city offices.

Q. So there's a clerk somewhere in an associate office who you believe requested a religious accommodation. Where does that matter currently stand?

A. That I do not know.

Q. Do you know if any accommodation has been offered?

A. I do not know that.

Q. Do you know if any discipline has been issued?

A. No.

Q. How do you know about this situation?

A. Just from looking at the folder yesterday. And speaking with my HR manager.

Q. What did your HR manager tell you?

A. She said she believed there were two people in the district that have ever brought this forward.

Q. Did she tell you when this was brought forward?

A. Not -- no.

Q. Did she give any indication whether it's currently ongoing?

A. I do not know.

[22] Q. Did she tell you whether there was a lawsuit filed?

A. No.

Q. Did she tell you whether there was an EEO filed?

A. I believe the first -- the first gentleman was an EEO. I could not tell you about the second employee.

Q. Did your HR director tell you anything about -- anything else about this second employee?

A. No.

Q. So it's been approximately three years that you've been either detailed or actually district manager of the Central Pennsylvania region, correct?

A. Correct.

Q. And during that time, other than Mr. Groff, you don't know of any other requests for religious accommodations in this district?

A. No.

Q. If others were made, would you be in a position to know about them?

A. Not usually, no.

Q. What did you do today in preparation for today to learn what other religious accommodations had been requested in your district?

[23] A. Today?

Q. In preparation for today. What did you do to learn whether other--

A. I had -- I went down to my HR manager's office last night and we went through -- she pulled up anything that she could pull up to see where there were any -- any information on it. And those were the two names that she had information on.

Q. Would she have information available to her to cases that aren't currently pending?

A. I would think so.

Q. Have you ever -- since you started working for the Postal Service, have you ever been part of a discussion before yesterday about a religious accommodation?

MS. DeBRUICKER: Objection. This is beyond the scope of the 30(b)(6) notice.

You can answer based on your personal knowledge.

A. No.

MS. DeBRUICKER: That's part of why I suggested we have the individual deposition first.

A. No.

Q. No training?

MS. DeBRUICKER: Objection to form.

[24] Q. You never had any training in your -- is it 34 years with the Postal Service?

A. Correct.

Q. Regarding religious accommodations?

MS. DeBRUICKER: Objection to form.

MR. CROSSETT: What's the objection to form?

MS. DeBRUICKER: Lack of foundation.

MR. CROSSETT: I'm asking if she's had training.

A. We have a lot of training.

Q. But to the best of your recollection, no training on religious accommodations?

A. We have training on accommodations, correct. We do yearly training.

Q. Do you have training on religious accommodations yearly?

A. I believe that's included in that.

Q. Who gives that training?

A. It's on line.

Q. Who in the Central Pennsylvania District takes that training every year?

MS. DeBRUICKER: Objection. This is beyond the scope of the 30(b)(6) notice. There's [25] nothing noticed on training, regarding any sort of training.

You may answer based on your personal knowledge.

A. I have no knowledge of who specifically is required to take it.

Q. Are all of the district managers required to take it, to your knowledge?

MS. DeBRUICKER: Objection. It's beyond the scope of the notice.

A. I don't know.

Q. Are the post masters underneath you required to take that training?

A. I don't --

MS. DeBRUICKER: Objection. Beyond the scope of the notice.

A. Again, I don't know who all is required.

Q. Is your HR person required to take it?

MS. DeBRUICKER: Same objection.

A. I don't know. They receive a lot of training.

Q. The training that you receive every year regarding religious accommodations, what's the content of that training? What are you told to do when someone requests a religious accommodation?

[26] MS. DeBRUICKER: Objection. Beyond the scope of the notice.

A. It's accommodations. Everybody reaches out to the HR department for guidance. It's rare. When things are rare like that, you reach out to the HR

department to make sure you're handling things correctly.

Q. Anything else that's the substance of the training?

MS. DeBRUICKER: Same objection.

A. I don't recall.

Q. So your testimony is you get training every year on religious accommodations and all you can tell me is that the training that you recall is to reach out to HR. Is that correct?

MS. DeBRUICKER: Same objection. Also argumentative.

You may answer.

A. It's multiple accommodations.

Q. What do you mean by that?

A. There's different accommodations, different types of accommodations--

Q. I'm not sure what you mean.

A. -- from the Postal Service.

I can't even think of specifics. But [27] there's different types of accommodations, whether it's health reasons, that type of things that we get for accommodations, requests for special accommodations.

Q. I understand. You're talking about accommodations when someone might have a physical disability. Is that correct?

A. That's correct.

Q. My question was about religious accommodations. Do you get training on how to respond to requests for religious accommodations?

MS. DeBRUICKER: Objection. Beyond the scope of the notice.

You can answer based on your personal knowledge.

A. I can't give you an answer to that. I don't -- I don't -- we get accommodation training.

Q. But as you sit here, you don't know if that's just for physical limitations or religious convictions or both. You don't know. Is that fair?

MS. DeBRUICKER: Objection.

MR. CROSSETT: What's the objection?

MS. DeBRUICKER: Objection to form.

MR. CROSSETT: What's wrong with [28] the form?

MS. DeBRUICKER: It was compound and again beyond the scope of the notice.

MR. CROSSETT: I'll break it down so it's not compound.

BY MR. CROSSETT:

Q. Help me understand. The training, as you recall it, is it specifically dealing with requests for religious accommodation?

A. I wouldn't -- I don't remember. But I would say there's -- it's encompassed of all accommodation requests.

Q. My initial question that prompted your answer about the yearly on-line training was I asked for what conversations you've been a part of during your service with the Postal Service regarding religious accommodations.

So my follow-up question is, other than the yearly training that you have on line, what training or what

-- I'm sorry -- what conversations have you been involved in with the Postal Service regarding religious accommodations?

MS. DeBRUICKER: Objection as beyond the scope of the notice.

A. What conversations?

[29] Q. Correct.

A. I don't have a conversation. I mean, it's a rare - it's very rare. In 34 years, there's no conversation. You know, that's kind of a casual thing that you -- conversation is something casual.

Q. Okay.

A. I don't have conversations about religion.

Q. So broaden the word conversation. Any discussions with any of your people above you or people below you about religious accommodations?

A. Personally?

Q. Yes.

MS. DeBRUICKER: Objection. Beyond the scope of the notice.

A. No. No. No.

Q. Ever have discussions with people either above you or beneath you at the Postal Service regarding an undue burden to the Postal Service as it relates to a religious accommodation?

MS. DeBRUICKER: Objection. Beyond the scope of the notice. Also calls for a legal conclusion.

You may answer if you're able.

A. Could you re -- could say that again?

Q. Sure.

[30] MR. CROSSETT: Would you mind reading that back for me? Thank you.

(Whereupon, the reporter read back the referred-to portion of the record.)

THE WITNESS: No.

BY MR. CROSSETT:

Q. Are you aware of any religious accommodation considered by the Postal Service which was not ultimately offered to Mr. Groff?

A. One more time.

Q. Sure. I think I can do it again.

Are you aware of any religious accommodation considered by the Postal Service that was not ultimately offered to Mr. Groff?

A. No.

Q. And I think you answered this, so just -- if you already did, let me know. I think you already told me that you're not aware of any accommodations that were offered to Mr. Groff by the Postal Service. Is that correct?

A. That's correct.

Q. A few minutes ago we discussed two individuals in the Central Pennsylvania District and both of them had some relationship to a religious request for time off.

[31] So excepting or aside from those two individuals, are you aware of any other individuals within the Central Pennsylvania District who have requested a religious accommodation?

A. No.

MS. DeBRUICKER: Objection as beyond the scope.
But you may answer.

A. No.

Q. In your 34 years with the Postal Service, have you worked outside of the district of Central Pennsylvania?

A. Yes.

Q. So I'm going to ask you my last question again, but I want to broaden it out to any time in your service. Were you aware of any -- other than the two carriers - - or the two employees we just talked about, plus Mr. Groff, any other postal employees that you're aware of that requested a religious accommodation?

MS. DeBRUICKER: Objection as beyond the scope.
You can answer if you know.

A. I'm just thinking of all my positions where I managed carriers or clerks.

[32] Q. Sure. Or even just heard about it. Even if they weren't directly under you.

A. I don't recall any.

Q. You'll admit that Mr. Groff sought a religious accommodation of not being scheduled to work on Sundays?

MS. DeBRUICKER: Objection to form.

MR. CROSSETT: What's the objection to the form?

MS. DeBRUICKER: Leading.

MR. CROSSETT: I can lead. It's a deposition.

MS. DeBRUICKER: Objection to the form of the question.

THE WITNESS: Could you ask me that again?

MR. CROSSETT: Would you read it back?

(Whereupon, the reporter read back the referred-to portion of the record.)

THE WITNESS: One more time. Sorry.

(Whereupon, the reporter read back the referred-to portion of the record.)

MS. DeBRUICKER: Same objection.

[33] THE WITNESS: I'm told that, yes.

BY MR. CROSSETT:

Q. You'll admit that Mr. Groff was willing to work extra shifts during Monday through Saturday in order not to be scheduled to work on Sunday?

A. I have no knowledge of that.

MS. DeBRUICKER: Objection. That's not even a question.

Q. Will you admit that in 2015, while working at Quarryville, Mr. Groff was granted the accommodation of not being placed on the Sunday schedule in exchange for working extra shifts during the week and Saturdays?

MS. DeBRUICKER: Objection to the form. Objection to beyond the scope of the deposition notice.

MR. CROSSETT: What's your objection to form?

MS. DeBRUICKER: Again, leading.

BY MR. CROSSETT:

Q. Just so that you understand. Your attorney is objecting that when my question suggests the answer, that it's inappropriate.

Just so you understand, many of my questions will be designed to suggest the answer. [34] You can tell me if it's true or not true. But that is a form of a question that's regularly used during deposition and I'll continue to use it. Just so you understand what is happening between your attorney and I.

MR. CROSSETT: Could you reread the question for me?

(Whereupon, the reporter read back the referred-to portion of the record.)

MS. DeBRUICKER: Again, objection to form and it's beyond the scope of the notice.

You can answer based on your personal knowledge.

THE WITNESS: You're asking me if I would admit that he did -- asked those, he did certain things or he worked certain days. I have no knowledge of that.

BY MR. CROSSETT:

Q. Will you admit that in 2017 the Postal Service granted Mr. Groff the accommodation of scheduling another RCA on each Sunday that Mr. Groff was placed on the Sunday work schedule?

MS. DeBRUICKER: Objection to form and as beyond the scope.

MR. CROSSETT: What's your [35] objection to form?

MS. DeBRUICKER: Again, leading. I understand you're going to go ahead and ask your question, but my objection stands.

MR. CROSSETT: And what's your objection beyond the scope? You don't think this is within the scope?

MS. DeBRUICKER: I don't. But I'm allowing her to answer.

MR. CROSSETT: No. 1, all religious accommodations provided to mail carriers. And it goes on, including but not limited to religious accommodations provided to the plaintiff. It is squarely within the scope.

I'm asking, in 2017, if this was an accommodation. She can answer it. It is definitely within the scope.

BY MR. CROSSETT:

Q. Do you understand the question?

A. No.

Q. I'll read it again.

A. Quite frankly, it appears that you're putting words in my mouth with the way you word it. But go ahead.

Q. Do you have any knowledge of what [36] accommodations the Postal Service made or offered to Mr. Groff in 2017?

MS. DeBRUICKER: Objection. Asked and answered.

You may answer.

A. What I was informed was that they tried to accommodate him by replacing him with another employee when we had employees available.

What normally happens in the Postal Service is it's handled at the local level. So if you come in and you need a day off for a wedding or child's soccer game, you talk to your direct supervisor and you request special time off.

Q. You had said that they tried to find others to work or something like that. What did you mean by that?

A. If -- if there was -- you try a rotation, so you try to rotate employees in. Many times everybody works. But if somebody isn't working, then you can request -- and they worked the week prior and it's their rotation not to work, you can reach out to them and try to see if they will work for someone else.

Q. Meaning asking for someone to volunteer?

A. Correct.

Q. Are you aware whether the Postal Service did [37] anything else other than ask for volunteers in order to accommodate Mr. Groff?

A. Specifically, no.

Q. When you say specifically, no, is there something you know unspecifically?

A. No. But when you ask -- I mean, I couldn't tell you if they got volunteers actually. I don't know the specifics of it. Generally, like I said, handled at the local level.

Q. You mentioned about getting a day off for a wedding or a soccer game. What would be the process that you're referring to to get a day off for a wedding or a soccer game?

A. In advance, you would fill out what we call a 3971. And it's a request for leave.

Q. What happened next? What would happen next?

A. Generally, the supervisor would look at the schedule and see if there was an opportunity.

Q. And what do you mean by an opportunity?

A. Grant that leave. So if you had four employees off or two employees off and you didn't have enough employees to deliver the mail, you would have to deny the request.

Q. So on Amazon Sunday deliveries, my understanding is ARCs were used first and then RCAs [38] were used next. And with the RCAs there was a volunteer to work every week list and then there was the rest of the RCAs. Is that your understanding, as well?

A. Yes.

Q. So speaking about the rest of the RCAs, the ones who didn't volunteer to work every week, if an RCA put in a Form 3971 request for leave and said, my child is getting married this Sunday, I need to be off, what would be the supervisor's process? How would they evaluate that request?

A. If he didn't have enough employees to cover delivering the packages, you would deny it.

Q. So imagine that there are -- let's say RCAs that were covering the hub. And five of them volunteered to work every week, which left 15 on the didn't volunteer to work, but were still RCAs. And there were ten routes to be covered. So of the 15 non-volunteers, there are ten routes to be covered. And one of the RCAs of those 15 says, I'd like to request leave for a wedding, would that leave request be granted or denied?

MS. DeBRUICKER: Objection as beyond the scope.

But you can answer.

[39] A. In your math, are you saying I have enough to cover those routes?

Q. So 20 RCAs total.

A. Okay.

Q. Five are on the volunteer list.

A. Okay. Got 15 left.

Q. Fifteen left and there's a total of ten routes.

A. Okay.

Q. One --

A. Ten carriers.

Q. Sure.

A. So you're still short five.

Q. No. Ten routes to be delivered that Sunday.

A. Okay.

Q. Right. You need at least five from the non-volunteer RCA list.

A. Okay.

Q. And there are 15 on the non-volunteer RCA list and one of those people on the non-volunteer RCA list says, I'd like leave for a child's wedding.

Would that leave be granted or denied or something else?

MS. DeBRUICKER: Objection to form and beyond the scope.

[40] A. If it was in advance, you could give him off, yes. However, that would be factored in to the rotation.

Q. What do you mean by that?

A. So if it was every other Sunday, let's say the rotation was you work every other Sunday, then if you didn't work, you'd have to work two Sundays in a row.

Q. Why?

A. Probably to make it fair for everyone, so they all worked the same amount. They don't earn leave.

Q. Is it your understanding that Mr. Groff has never worked on a Sunday with the Postal Service?

MS. DeBRUICKER: Objection. Beyond the scope.

You can answer.

A. I don't know.

Q. Assume with me that he has never worked on a Sunday for the Postal Service. And I'll represent to you that that's been the consistent testimony in this case.

A. Okay.

Q. What impact would Mr. Groff's failure to work on a Sunday have on the Postal Service?

[41] A. Big impact. Cost.

Q. Tell me about cost.

A. Cost would more than likely put RCAs over 40 hours, which is overtime. It would be later delivery. So instead of splitting -- instead of having ten routes, you would probably -- you would have 11 routes that you - - in theory, that you had to split amongst everybody else. Costs could be incurred for the distance and the drive.

There's a huge safety factor because now it's later delivery. Like today it's probably going to get dark about 4:30. You're putting them in unfamiliar territory.

Obviously at \$8.6 billion in the hole, the Postal Service has to look at costs. And we look at dollar -- or dollars per package cost, which is overtime and how many hours that we actually use for Sunday.

Q. Is it your testimony that these things that you've just listed, cost for overtime, later delivery, cost for a distance or drive or safety measures, that these were the actual impacts on the Postal Service from Mr. Groff not working on Sundays? Is that your testimony?

A. I would say it would be.

[42] Q. All right. When you say I would say, do you know if it was?

A. I don't know. You just told me that he never worked, right? So that would be a cost.

Q. So, maybe I wasn't clear. Do you -- are you telling me these are the hypothetical injuries or impacts on the Postal Service or this is what actually happened?

A. In his case or in most cases that I -- when I review it, if you were short staffed, yes, it is a cost and it's a safety concern for me, yes.

Q. I want to know about this case. I want to know about the Sundays that Gerald Groff didn't work and he was disciplined by the Postal Service because the Postal Service has claimed it had an impact. And I want to know from you exactly what that impact is.

A. That is the impact. Specific to that office, I can't tell you exactly. But that is the weekly impact. That's

why we don't use regular carriers at triple the dollar rate.

Q. Is it your testimony that when Mr. Groff didn't work on a Sunday he was scheduled, that the Postal Service brought a regular or a career carrier in to work? Is that your testimony?

A. I can't tell you specifically, no.

[43] Q. So you don't know what happened, is that fair, when he didn't come in to work?

A. I can only go by my experience.

Q. But you don't know any specifics about this situation, what happened?

A. I did not look in to that, no, I did not. I do not know.

Q. So you don't actually know if any RCA did actually work overtime on a Sunday that Mr. Groff was scheduled as a result of Mr. Groff not working. Is that correct?

A. Again, it may not be that Sunday, but by Wednesday when they're over 40 hours, it's overtime. So the longer they work on Sunday, quicker they run in to overtime.

Q. Which employees were caused overtime by Mr. Groff's failure to work on Sundays and when?

A. Which employees?

Q. Which employees? Which USPS employees incurred overtime costs to the parcel service?

A. It couldn't tell you that.

Q. Why not?

A. Two years later.

Q. Why couldn't you?

A. Because I don't have that detailed [44] information.

Q. Could you have gotten it in preparation for today?

A. Possibly. It's two years, right? Ago.

Q. He last worked in January of 2019.

A. Okay.

Q. Could you have gotten that information in preparation for today?

A. Probably.

Q. The question that was noticed for today's deposition was the impact on defendant and its operations arising from plaintiff's not working on Sundays. This is No. 3.

And your testimony is, you could have gotten the actual information in preparation for today, but you didn't. Is that fair?

A. That's fair.

Q. Is that also a fair statement as it relates to a later delivery, that you could have gotten the information, but you didn't for today?

A. Correct.

Q. Is that also a fair statement as far as cost for distance for the drivers, you could have gotten that information, but you didn't for today?

A. I'm not sure about that one.

[45] Q. What do you mean?

A. Because when you split a route, it's kind of an emergency situation. So you don't have any -- you don't have any record of, I have you delivering on this side of town and now I got to send you over to that side of town, you don't have any record of that.

Q. Do you know if any routes were split as a result of Mr. Groff not working Sundays?

A. Specifically in this situation, no. I can tell you in my experience, that's what you have to do.

Q. Your experience is that splitting a route would be the only way to cure Mr. Groff not appearing on Sunday. Is that your testimony?

MS. DeBRUICKER: Objection.

MR. CROSSETT: What's the objection?

MS. DeBRUICKER: Mischaracterizes her testimony.

MR. CROSSETT: I'm asking her if that's her testimony.

BY MR. CROSSETT:

Q. Tell me.

A. Ask me the question again.

MR. CROSSETT: Could you read the [46] question?

(Whereupon, the reporter read back the referred-to portion of the record.)

MS. DeBRUICKER: Same objection. Also leading.

You may answer.

THE WITNESS: To my knowledge, Mr. Groff was -- Groff was AWOL. AWOL means you didn't show up. I would say yes.

BY MR. CROSSETT:

Q. Don't you think that the person scheduling could have called someone else in to do the route rather than splitting the route?

A. Being in an office, that is what you do.

Q. So you'll admit that if someone else was called in, there wouldn't be an increased cost for distance for the route, correct?

A. If they --

MS. DeBRUICKER: Objection. Leading.

A. -- would come in. Nobody will pick up their phone Sunday morning to come in to work.

Q. Do you know when Mr. Groff each week gave notice that he wouldn't there? Do you know?

A. No.

[47] Q. You also testified that there was a safety issue where packages are being delivered in darkness. Do you know as a result of Mr. Groff not working on Sundays, whether that actually happened?

A. No.

Q. Would there be documents or people that you could have talked to, documents to look at or people you could have talked to in advance of today that you could have gotten the answer to that question and provided it at today's deposition?

A. No.

Q. So your testimony is it is impossible, both today and at any point in the future, for you or anyone else in the Postal Service to give me an answer to that question, whether packages were delivered in the dark as a result of Mr. Groff not coming in. Is that correct?

MS. DeBRUICKER: Objection to form. Argumentative.

You may answer.

A. If you are asking me would an accident have occurred because he did not come to work, I can't tell you that.

I can tell you that the risk of accidents increase when you're carrying mail late. The MOU, [48] the agreement with Amazon, is that we don't deliver to the mailbox, we deliver to people's front porch. So when the sun goes down and everything freezes up and the handrails aren't out and people let their dogs out and all that environment changes, the risk is greater.

Q. That was an answer to a different question.

A. Okay.

Q. My question was, you had testified that it would be a safety issue in delivering in darkness.

A. Okay.

Q. And I asked you, did that actually occur, were packages delivered in darkness because of my client's actions. And you told me you don't know. Is that right?

A. That's correct.

Q. And then I asked you, could you have checked anything in preparation for today to have the answer. And I think you told me, no, you don't think you could have, right? There's no way to get that information. Is that right?

MS. DeBRUICKER: Objection. Mischaracterizes testimony.

You may answer.

A. I would have to go back to the Weather [49] Channel and find out what the weather was. I'd have to see what time the sun went down, if that's what you're asking me. I can just tell you from my experience what I try to avoid.

Q. Here's what I want to know. I want to know if tomorrow or next week or next month or at trial, you or anyone else is going to come and say, actually we now did some research, we know packages were delivered in the dark and there really was a safety issue.

So I want to know what you would need to do in order to get the answer. Or maybe there's nothing you can do. I want to know.

A. I could go back to see if they experienced an accident. But what's also prevalent in that situation and in that environment is slower delivery, as you can imagine.

Q. Why would it be slower delivery?

A. Because you don't know where you're going. It's dark. You can't see. It's just inherent of delivering later in the evening.

Q. And tell me again why you believe my client's action may have caused later in the evening delivery, but you're not sure. But tell me why you think it might have happened.

[50] A. Specific to him?

Q. Yes.

A. I can't -- I can just tell you from my experience what happens in an environment. It's happening right now in every office during peak. We have heavier

volume, heavier volume, Sunday volume, less employees, don't show up. It's a strain on the Postal Service.

Specific to Mr. Groff, I don't have that knowledge because I wasn't there locally.

Q. You will admit that if the person scheduling Amazon Sundays in Lancaster knew Mr. Groff wasn't going to come in and had scheduled someone else in his place, that there would be no safety or darkness issue caused by Mr. Groff. Is that correct?

MS. DeBRUICKER: Objection.

A. If you have someone, yes, to replace him.

Q. And the same for later delivery, right, no harm for later delivery?

A. Correct.

Q. And the same for no more cost for distance or driving, correct?

MS. DeBRUICKER: Objection.

Q. Is that correct?

A. If you have the correct staff.

[51] Q. Right. And the same for --

A. It goes away, right.

Q. And the same for no overtime, correct?

A. Correct.

Q. So, assuming scheduling at Lancaster found someone else, they scheduled someone else to take his spot, you'll admit that there was no cost or late delivery or excessive distance or safety issues caused by my client to the Postal Service, correct?

MS. DeBRUICKER: Objection.

A. If you have proper staffing to get him off the street sooner, you are correct, you wouldn't have those issues.

Q. Okay. Assume that hypo for me.

A. Okay.

Q. They knew he wasn't coming in because he never worked on Sundays, told them that in advance, and they scheduled someone else, another RCA in his place. Assume that for this next question. Do you understand that?

A. Yes.

Q. What impact on the Postal Service and its operations would arise in that situation?

A. In a perfect world?

Q. In the real world. In this situation.

[52] A. 459 RCAs short in Central Pennsylvania. So you want me to say if they were fully staffed, would they be able to get the routes covered prior to darkness and -- possibly the sun's out and no icy conditions and no snow, then, yes, it would be a good day.

Q. I think I understood your answer and I appreciate that. And I understand that 459 RCAs short seems like a significant number.

A. Post masters are delivering mail.

Q. I've heard that. Which I'm sure is hard on morale.

A. Very hard.

Q. Is that very hard you said?

A. Correct.

Q. I'll represent to you that the testimony given in this case by USPS employees was that at least on some Sundays when Mr. Groff was scheduled to work from Lancaster, Amazon Sunday, he told them in advance he wasn't coming in any Sunday and so as a result, the person scheduling put an extra RCA on the list, sort of in his spot. You understand that situation?

MS. DeBRUICKER: Objection.

A. If you're telling me that's what happened, [53] okay.

Q. Do you understand so far what I'm describing?

A. Correct.

Q. Okay. In that situation, I just need to know what negative impact, if any, resulted to the Postal Service from Mr. Groff not coming in in that situation?

A. In that situation? Wouldn't have been an impact.

MR. CROSSETT: Take a short break. (Whereupon, a brief recess was taken.)

BY MR. CROSSETT:

Q. Back on the record. We had been talking about the impact on the Postal Service and you had covered a number of categories; overtime, later delivery, cost for distance, and safety in darkness. So I want to ask you specific to this case, specific to Mr. Groff and the Sundays that he didn't work.

Do you have actual evidence of what actually happened negatively and specifically as a result to the Postal Service?

A. No.

Q. And could you have that information today if you had talked to different people or looked at [54] different documents, as far as you know?

A. A portion of it.

Q. Again, on that same vein of, you know, not hypothetical, but in this case, sort of actual impact, do you have any knowledge as you sit here today or have any evidence of any actual hardship that resulted to the Postal Service from Mr. Groff's decision not to work on Sundays?

A. No.

MS. DeBRUICKER: I'll object to the extent that hardship could be construed as a legal term.

But you can answer.

A. No.

Q. Have you ever had a discussion with anyone -- other than your counsel -- anyone else about any hardship caused -- actually caused to the Postal Service by Mr. Groff's failure to work on Sundays?

MS. DeBRUICKER: Objection. Beyond the scope of the notice, to the extent that it's asking for her personal involvement.

You can speak on behalf of yourself.

Q. Do you need me to repeat the question?

A. Please.

[55] Q. I understand.

MR. CROSSETT: Would you mind reading it back?

(Whereupon, the reporter read back the referred-to portion of the record.)

THE WITNESS: No.

BY MR CROSSETT:

Q. One of the elements in this case is -- and I'm reading from the Exhibit A to the deposition notice which states, the salary and benefits plaintiff would have been entitled to receive had he remained employed, including but not limited to wages -- sorry - - wage increases and all benefits including pension and retirement.

So in this case, Mr. Groff was separated from the Postal Service in January of 2019. So I want to ask you some questions about what benefits he would have received had he continued working. Does that make sense as a general category?

A. Right.

Q. So help he understand what he would have received if he continued to work for the Postal Service.

MS. DeBRUICKER: I'll object to the characterization that he was separated.

[56] But you can answer.

MR. CROSSETT: What's your objection?

MS. DeBRUICKER: That he -- he quit.

MR. CROSSETT: Okay. I'll use the phrase constructively discharged, but we can disagree on that.

MS. DeBRUICKER: I'll object to that, too. But I'll let you continue with it.

MR. CROSSETT: That's why I thought separated was a better one because it wasn't argumentative because it is true, he was separated. We have different theories of it, but I'm going to use separated so that it's not argumentative.

BY MR. CROSSETT:

Q. So talking about what he would have earned had he stayed. Can you tell me the answer to that?

A. In March there was a contractual increase for RCAs of a \$1.20 per hour.

Q. This is March 2019?

A. Correct. And obviously that would depend on hours worked.

Q. Do these hourly rate increases come with any regular scheduled predictable pattern?

[57] A. No.

Q. So there's no way to predict what the rate would be for an RCA five years from now?

A. No.

Q. Do you know the value of the benefits, including pension, retirement that Mr. Groff was receiving in January of 2019?

A. There are no benefits.

Q. If Mr. Groff had become a career employee, a full-time carrier, what would be the value of any benefits, including pension or retirement, that he would have earned in 2019?

MS. DeBRUICKER: I'll object as beyond the scope of the notice.

But you can answer.

A. His rate would go up, his dollar rate. And he would begin to earn at that point leave and retirement.

Q. So, in 2019, what would be the hourly rate of a career carrier?

MS. DeBRUICKER: Again, I'll object as beyond the scope.

But you can answer.

A. I don't know specifically. I don't know what their rate is.

[58] Q. Do you know the value of any benefits that career carriers receive?

MS. DeBRUICKER: Same objection.

A. Career carrier would earn benefits and hospitalization.

Q. I'm looking for the dollar value.

A. Oh, the dollar value. It depends. Every contract is different. You know, everybody pays a different portion. If you select a specific hospitalization, your -- you know, the rate -- your payout is different. Everything's different.

So it would have to be specific to what he selected as far as the hospitalization rate goes and how much he selected for retirement. I couldn't give you that specific.

Q. If Mr. Groff had stayed with the Postal Service and received a career carrier position in 2019, would he have earned the same hourly rate as every other career carrier in the district?

MS. DeBRUICKER: Objection. Beyond the scope.

You can answer.

A. Not at first. It goes by seniority. So you would get a cost of living. And the longer you're there, the higher your rate is.

[59] Q. What is the starting salary for a career carrier in 2019?

MS. DeBRUICKER: Objection. Beyond the scope. You can answer if you know.

A. It's specific to the route you bid. Their contract is such that the routes are evaluated. So if you bid an H route, you get a lesser salary. You get a J route, it's a different salary and you get a day off every other Saturday. If you're a K route, you get every day off -- every Saturday off. They're all different. Depends on what route that he would bid would predicate what his wage would be.

Q. What's the range?

A. Range?

MS. DeBRUICKER: Same objection.

Q. Salary range.

A. I couldn't tell you specifically.

Q. Could you estimate it for me?

MS. DeBRUICKER: Same objection.

A. I have no idea.

Q. Is it greater than 50,000?

MS. DeBRUICKER: Same objection.

A. I have no idea. No, I don't believe so.

Q. When would there have been an opening for [60] Mr. Groff to become a full-time employee as a mail carrier?

A. In that office?

Q. In any office.

A. Well, again, it's contractual. It's a contract. In that office, it's the same carriers that were there are still on their routes. So until they retire, nothing opens up.

Q. Are they eligible for retirement currently?

A. They are.

Q. How old are the full-time mail carriers at Holtwood?

MS. DeBRUICKER: Objection. Beyond the scope.

You can answer.

MR. CROSSETT: It's not beyond the scope.

MS. DeBRUICKER: The question is when would there have been an opening.

MR. CROSSETT: Yes. And don't you think the age of the two people that are career employees that are eligible for retirement is relevant to determine when the opening is going to come up?

MS. DeBRUICKER: I don't. But I'm [61] having her answer.

Q. Do you know how old they are?

A. No.

Q. Can you estimate?

A. I've never met them. But they are eligible. But I would say age really doesn't have anything to do with it because we have people working for us that are 70.

Q. Could you estimate an average age where full-time employees that are retirement eligible retire as carriers in the Central Pennsylvania District?

MS. DeBRUICKER: Same objection. You can answer.

A. It would be my opinion.

Q. Yes.

A. I'd say 60.

Q. How many years of service or what's the calculation to determine if somebody is retirement eligible?

A. It's years of service and age.

Q. And what does that have to equal? What's the formula?

A. For rural, I could not tell you.

Q. Could you estimate it?

[62] A. No.

Q. If Mr. Groff had not been separated from the Postal Service in January and continued working there, what opportunities would he have to become a career full-time employee outside of the Holtwood office?

A. Quite possibly none.

Q. Why is that?

A. Again, it's the contract. So it would have to be a situation, which is rare, then another office posted positions and nobody else in there wanted it. And then it would go outside the office. And it would go by seniority and who bid that position. So if five people from different offices bid it, it would go by seniority.

Q. So, it's my understanding that in January of 2019, when Mr. Groff was separated from the Postal Service, he was the only RCA in Holtwood. Is that your understanding, as well?

A. That's correct.

Q. So assuming that he hadn't left in January and he continued there at Holtwood, would he be first in line when one of the full-time carriers resigned or retired?

A. If he was the only one there, yes.

[63] Q. So there's no one from Quarryville that could move in ahead of him. Is that correct?

A. That's correct.

Q. Do you know the identity of each person who participated in discussions and/or decisions regarding the issuance of discipline to plaintiff; meaning Mr. Groff?

A. Do I know them?

Q. Do you know the identity of those people?

A. Yes.

Q. Who are they?

A. The post master.

Q. Who is that?

A. Hess.

Q. Brian Hess?

A. Yes, Brian Hess. Post office operations manager. At one time it was Keith Krempa. And then it was Chris Kruppo, K-R-U-P-P-O. And I believe the supervisor was on one of the disciplines.

Q. Supervisor at Lancaster?

A. You know her name?

Q. You mean Diane Evans?

A. Diane, that's correct.

Q. Those would be the individuals that would make the decisions regarding whether to issue [64] discipline to Mr. Groff?

A. That's correct.

Q. I'll represent to you that the testimony in this case has been that the hub in Lancaster was scheduling another person whenever Gerald was supposed to be scheduled and then at some point they received correspondence from labor relations and perhaps at that point they stopped scheduling someone else.

So, what I want to ask you is what right do RCAs have to not work on Sunday, generally speaking, if any?

MS. DeBRUICKER: I'll object to the preamble and to the extent that it's calling for a legal conclusion.

You can answer.

A. I'm a little confused with your first entry in to that question. Could you repeat it?

Q. Sure. Well, let me just give you the question.

A. Okay.

Q. What right, if any, do RCAs have not to work on Sunday?

A. They're all expected to work

Q. So not thinking about Mr Groff [65] specifically, but the Postal Service has a right to tell any or all of its RCAs to come in and work on Sunday. Is that correct?

A. They are expected to work on Sundays, correct.

Q. And it's fair to say that if someone is on leave that's been approved, that would be a reason that they wouldn't be expected to work on Sunday. Is that correct?

A. That's correct.

Q. So someone that's on approved leave that didn't work on Sunday wouldn't be in any violation that might result in discipline. Is that correct?

A. That's correct.

Q. Is the same true if someone is on FMLA leave, that they wouldn't be expected to work on Sunday and they wouldn't be subject to discipline for not working on Sunday? Is that correct?

MS. DeBRUICKER: Objection. Beyond the scope.

You may answer.

Q. Do you understand?

A. Yeah. I'm just -- I mean, I'm thinking only Sunday FMLA case?

Q. I'm just asking about Sundays.

[66] A. Right. So an FMLA case specific to Sundays would be -- I don't know why you would have an FMLA case that was specific to Sundays. It could be inclusive of Sunday.

Q. Right. I'm saying if --

A. If somebody called off sick for FMLA and requested FMLA, that is correct.

Q. That they wouldn't be subject --

A. You have to grant that. You would have to, yes.

Q. Meaning they wouldn't be subject to discipline for not working on Sundays if they were on FMLA leave?

A. Within their -- yes, the guidelines in the FMLA case, that's correct.

Q. You're familiar with the MOU that governs the RCAs working on Sundays? Are you?

A. Yes.

Q. You've had a chance to review that document before today --

A. No.

Q. -- in preparation for today?

A. Did not.

Q. Are you aware of any document in the post office that requires the post office to schedule [67] every single RCA on a Sunday?

MS. DeBRUICKER: Objection to form.

And to the -- as beyond the scope of the notice.

MR. CROSSETT: What's your objection to form?

MS. DeBRUICKER: Leading.

Foundation.

MR. CROSSETT: Would you read the question back?

(Whereupon, the reporter read back the referred-to portion of the record.)

MS. DeBRUICKER: I'll withdraw my leading objection. The foundation objection stands.

THE WITNESS: The MOU.

BY MR. CROSSETT:

Q. Do you think the MOU requires the Postal Service to --

A. It specifies the employees that will work.

Q. Right. It says, ARCS first and RCAs second, right?

A. Correct.

Q. So my question is, is there any obligation that you're aware of that the Postal Service has to schedule every single RCA on a Sunday? That's my question.

[68] MS. DeBRUICKER: On each Sunday, schedule every RCA?

MR. CROSSETT: Yes.

A. It depends on the size of the office, the amount of packages you get, the type of -- you know, the amount of employees that you need. You got ten routes and you got eight employees, you're going to be calling every office you can to find two more.

Q. And if you have ten routes and 20 RCAs, then the Postal Service doesn't need --

A. Goes into a rotation, that's correct.

Q. Let me finish my question. You have ten routes and 20 RCAs, the Postal Service doesn't need to schedule all 20 for that Sunday, correct?

A. Correct.

Q. And the Postal Service in that situation has the flexibility to choose which ten to schedule, correct?

A. Correct.

Q. And the Postal Service has the flexibility, if someone's on leave, not to put them on that week's rotation, correct?

A. Correct.

Q. And the Postal Service has the flexibility if someone's on FMLA leave not to put them on that [69] week's rotation, correct?

A. It's the law, correct.

Q. Isn't it also the law that the Postal Service has to grant a reasonable accommodation for religious convictions?

MS. DeBRUICKER: Objection. Calls for legal conclusion.

Q. If you know.

A. No.

Q. You don't know?

A. No.

Q. You just don't know whether the Postal Service has to provide accommodation for religious conviction? You don't know?

A. No.

MR. CROSSETT: I don't have any -- well, one second. Might be done.

(Whereupon, a brief recess was taken.)

(Whereupon, Gless 30(b)(6) Exhibit 1, 30(b)(6) Notice of Deposition, was marked for identification.)

MR. CROSSETT: On the record. Counsel, I've provided you with what's been marked as Gless 30(b)(6) 1. It is a paper clipped copy. And I'll represent the reason for that is I accidentally [70] wrote on

Exhibit A during the deposition. So I took another identical copy of the first page of Exhibit A and put it in. That's why it's paper clipped. I wanted to represent that to you. Give that to your witness.

BY MR. CROSSETT:

Q. There's a document in front of you marked Gless 30(b)(6), Exhibit 1. Do you see that document?

A. Yes.

Q. You don't have to read it carefully, but if you look at the second and third pages, it lists the topics that would be discussed today. So my only question for you -- don't tell me what your attorney said -- but did you have a chance to review this document with counsel in preparation of today's deposition?

MS. DeBRUICKER: That's a yes or no question.

MR. CROSSETT: It is.

A. Saying I'm taking too long? Yes.

Q. You did.

MS. DeBRUICKER: We just need to be careful about discussions with counsel.

Q. You did review this with your attorney?

A. Yes.

[71] Q. Okay.

MR. CROSSETT: I don't have any further -- may not have any further questions.

Q. In your district of the Postal Service when an employee makes a request for a religious accommodation, who does that request go to?

A. Local management.

Q. Meaning who?

A. It would be the supervisor in that facility.

Q. Is there anything contractually that requires the USPS to deliver Sunday Amazon packages before a certain time on Sunday?

A. No.

Q. You mentioned earlier that Central Pennsylvania District is 459 RCAs short. Can you give me an idea of how many RCAs there are total in that district?

MS. DeBRUICKER: Currently working?

Q. Current.

A. I don't know.

Q. Can you -- so you said there were 459 short. Can you estimate for me how many there should be total? I'm trying to get a sense of, are there 10,000 and should be 10,459, or are there only 500 and there should be a thousand? Does that make [72] sense? Can you estimate for me?

A. Yeah. I can estimate.

Q. Okay.

A. We have approximately 1500 rural routes. So you should have a sub for each rural route.

Q. So approximately one-third understaffed for RCAs?

A. I guess.

Q. Is that fair?

A. And the reason is because, depending on the type of route, H route, J route, K route, you don't have every day off, you work six days a week. Right. So you wouldn't necessarily need --

Q. The career carriers do it?

A. Yeah.

Q. And that's -- we're talking about right now. Have those numbers been approximately the same since 2017 and 2018 as current?

A. Probably.

Q. Okay. And I understand you're using an approximation.

A. Yes.

MR. CROSSETT: I don't have any further questions for the 30(b)(6) deposition.

MS. DeBRUICKER: I have a few [73] follow-up questions for you, Miss Gless.

THE WITNESS: Okay.

EXAMINATION

BY MS. DeBRUICKER:

Q. I understand your testimony to be that many accommodation requests are handled at the local level. Is that right?

A. Correct.

Q. There was a line of questioning regarding the impact of an RCA not being available on Sunday and also a line of questioning as to Mr. Groff's specific absences on Sunday. Do you recall that line of questioning?

A. Yes.

Q. Would there be -- would you expect there to be information at the local post office as to the impact of an RCA being absent on a Sunday when scheduled?

A. Yes.

Q. And would you expect there to be information from the local post office as to the impact of Mr. Groff's absence on a Sunday?

A. Yes.

Q. It's my understanding you did not have the [74] opportunity to make that inquiry. Is that right?

A. Correct.

Q. But that information would be available should someone be seeking it from the local post office?

A. Correct.

Q. Are you familiar with the Sunday delivery coming from the Lancaster hub or from a hub scenario?

A. Yes.

Q. Is it possible that RCAs scheduled to deliver Amazon Sundays through the hub organization might be working a route that they are not familiar with?

A. Yes.

Q. From your experience, does delivering a route you're not familiar with take longer?

A. Yes.

Q. You mentioned, I believe, my post masters are delivering mail. Is that correct?

A. That's correct.

Q. Could post masters get overtime for that?

A. Some do.

Q. And if routes take longer, would that mean a greater cost?

A. Yes.

[75] Q. In terms of employee time?

A. Yes.

Q. Are there --

A. Management and carriers.

Q. If a carrier is out late, can everyone else at the post office go home?

A. No.

Q. Who has to stay?

A. Supervisors.

Q. There was a line of questioning regarding the hardship impact -- separate from the cost, the hardship imposed by Mr. Groff's absence on Sundays. Do you recall that?

A. Yes.

Q. Would it be your understanding that the local post office would have the most direct information on that?

MR. CROSSETT: Objection. I just want to note on the record that that is a leading question. And because you object to the leading questions, saying they're improper, which they're clearly not, your objections to me are just patently frivolous.

You may answer the question. But I just want to note what's happening.

[76] MS. DeBRUICKER: I'm happy to rephrase my question.

MR. CROSSETT: You can lead. It's a deposition.

MS. DeBRUICKER: We have a disagreement as to what are proper forms for depositions.

BY MS. DeBRUICKER:

Q. What would be the best source of information as to hardships imposed by the absence of an RCA on Sunday at a post office?

A. Local.

MS. DeBRUICKER: And I'll note for the record to the extent that this witness did not make that inquiry, we are happy to provide that information through other forms of discovery.

With that, I have no further questions.

MR. CROSSETT: We should also note for the record that because this client was properly noticed for a 30(b)(6) deposition, we reserve all rights to object to information not provided today in this deposition, and move to exclude testimony at a future time from being presented at trial or having the witness -- having the Court deem the Postal Service bound by the testimony this client provided.

[77] I don't have anything further for this particular deposition.

MS. DeBRUICKER: Neither do I.

(Concluded at 3:21 p.m.)

[78] _____, 2019

I hereby certify that the evidence and proceedings are contained fully and accurately in the notes taken by me of the testimony of the within witness who was duly sworn by me, and that this is a correct transcript of the same.

Stacy D. Serba
Notary Public

The foregoing certification does not apply to any reproduction of the same by any means unless under the direct control and/or supervision of the certifying reporter.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 19-CV-1879

GERALD E. GROFF,

Plaintiff

v.

MEGAN J. BRENNAN, POSTMASTER GENERAL,
UNITED STATES POSTAL SERVICE,

Defendant.

NOTICE OF DEPOSITION PURSUANT TO
FED. R. CIV. P. 30(b)(6)

TO: UNITED STATES POSTAL SERVICE
c/o Veronica J. Finkelstein
Assistant United States Attorney
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106

PLEASE TAKE NOTICE that pursuant to Rule 30(b)(6) of the Rules of the Court of Federal Claims, Plaintiff, Gerald E. Groff, shall take the deposition of the UNITED STATES POSTAL SERVICE through one or more officers, directors, agents or other representatives who shall be designated to testify on behalf of the United States Postal Service regarding all information known or reasonably available to the United States Postal Service with respect to the subject matters identified in Exhibit "A". The United States Postal Service is requested to designate the person or persons most knowledgeable and prepared to testify on behalf of the United States Postal Service

concerning the subject matter described in Exhibit "A".

The deposition shall commence on December 19, 2019, at 1:30 p.m., in conference room 3600, at the U.S. Attorney's Office in Allentown, located in the Allentown Courthouse, 455 Hamilton St, Allentown, PA 18101, upon oral examination before a notary public or some other officer authorized by law to administer oaths.

CORNERSTONE LAW FIRM, LLC

Dated: December 13, 2019 By: /s/ David W. Crossett
David W. Crossett, Esquire

EXHIBIT "A"

In accordance with RCFC 30(b)(6) Plaintiff designates the matters identified below for examination. In construing these topics, the following instructions and definitions shall apply:

The person most knowledgeable concerning:

1. All religious accommodations provided to mail carriers within the relevant District from the time of Plaintiff's hire to the present, including but not limited to all religious accommodations provided to Plaintiff;

2. All religious accommodations sought by mail carriers within the relevant District from the time of Plaintiff's hire to the present, including but not limited to all religious accommodations provided to Plaintiff;

3. The impact on Defendant and its operations arising from Plaintiff's not working on Sundays.

4. Discussions and/or determinations by Defendant as to whether the impact of Plaintiff's not working on Sunday imposed an undue hardship on its operations.

5. The salary and benefits Plaintiff would have been entitled to receive had he remained employed, including but not limited to:

a. Wage increases

b. All benefits, including pension / retirement

6. When there would have been an opening for Plaintiff to become a full-time employee as a mail carrier, including but not limited to:

a. Plaintiff's seniority relative to other mail carriers;

b. The dates those mail carriers with greater seniority than Plaintiff left employment for any reason;

7. The identity of each person who participated in discussions and/or decisions regarding providing Plaintiff a religious accommodation, including but not limited to their role in such discussions and/or decisions.

a. The term “their role” above includes both what the individual said and any action taken by that individual.

8. The identity of each person who participated in discussions and/or decisions regarding the issuance of discipline to Plaintiff, including but not limited to their role in such discussions and/or decisions.

a. The term “their role” above includes both what the individual said and any action taken by that individual.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 19-CV-1879

GERALD E. GROFF,

Plaintiff

v.

MEGAN J. BRENNAN, POSTMASTER GENERAL,
UNITED STATES POSTAL SERVICE,

Defendant.

PLAINTIFF'S ANSWERS TO DEFENDANT'S
FIRST SET OF INTERROGATORIES

GENERAL OBJECTIONS

The following general objections apply to each interrogatory and are incorporated into each specific response.

A. Plaintiff objects to each interrogatory to the extent that it seeks information which is neither relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence.

B. Plaintiff objects to each interrogatory to the extent that it is overly broad as to time.

C. Plaintiff objects to each interrogatory to the extent that it is overly broad as to scope.

D. Plaintiff objects to each interrogatory to the extent that it seeks information that is protected from discovery by the attorney-client privilege or the work-

product doctrine or which constitutes or discloses the mental impressions, conclusions, opinions or legal theories of an attorney in this or any other litigation, or which is protected from disclosure by Federal Rule of Civil Procedure 26(b) or any other privilege or immunity.

4. State the date you became a member of the Evangelical Christian Church, where you attend services, the dates and times of the services you attend, what activities your religion requires you to refrain from on Sundays, and what activities you may perform within the confines of your religion.

Interrogatory No. 4.

Plaintiff objects that this interrogatory is compound, with many subparts, and therefore it is oppressive and burdensome. Plaintiff also objects that the request misstates facts not in evidence, i.e., he is not a member of the Evangelical Christian Church. Without waiving these objections, Plaintiff answers:

Plaintiff has regularly attended church his whole life. Beginning sometime after 2004, Plaintiff regularly attended and the DOVE Rivers of Life Fellowship, a church at 106 Main St., Refton, PA. Plaintiff does not recall any formal membership process for that church but regarded himself as a member. In early 2017 until April of 2018, Plaintiff regularly attended the Victory Church (Greenfield Campus), at 1827 Freedom Road, Lancaster, PA 17610. In April of 2018, Plaintiff began regularly attending the Mission Church (formerly known as the Harvest Bible Chapel), Plaintiff has not completed a formal membership process for that church. The Mission Church is located at 651 Lampeter Road, Lancaster, PA 17602.

Plaintiff attends morning worship services on Sundays, held at either 8:30 a.m. or 10:45 a.m.

Plaintiff objects to the interrogatory as improperly asking a question appropriate, perhaps, for Roman Catholics, but not for Protestants, i.e., what activities “your religion requires” you to refrain from on Sundays. Plaintiff objects to the extent this calls for information regarding the formal teaching and instruction of the church Plaintiff attends. As an evangelical Christian in the Protestant tradition, Plaintiff believes he is personally responsible for his faith relationship to Jesus Christ, and to render obedience to God in accordance with the Ten Commandments, including the obligation to “remember the Sabbath day and keep it holy.” The commandment itself requires Plaintiff to refrain from secular labor on the Sabbath, and to rest. Transporting goods (i.e., “loads”) and engaging in commerce on the Sabbath are expressly forbidden (*Jeremiah 17:19-27; Nehemiah 13:19*).

The serious offensiveness in the eyes of God of transporting goods on the Sabbath is powerfully emphasized in the Old Testament. Through the Prophet Jeremiah, God warned the Israelites that He would “kindle a fire” in the gates of Jerusalem “and it shall devour the palaces of Jerusalem and shall not be quenched” if they failed to observe the Sabbath, such as transporting a “burden” in and out of their houses and the city gates. *Jeremiah 17:19-27* (ESV). Following a period of exile in Babylon, and the return to Jerusalem, Nehemiah writes, “As soon as it began to grow dark at the gates of Jerusalem before the Sabbath, I commanded that the doors should be shut and gave orders that they should not be opened until after the Sabbath. And I stationed some of my servants at the gates, that no load might be brought in

on the Sabbath day.” *Nehemiah* 13:19 (ESV). Thus, all believers are taught the offensiveness of transporting goods on the Sabbath before and after the exile of the Israelites.

5. List all dates on which you requested a religious accommodation, what specific dates the accommodation was for, the specific accommodation requested, to whom the request was made, the response by anyone at the USPS, and any actions you took thereafter.

Interrogatory No. 5.

Plaintiff objects that this request is vague with respect to “any actions you took thereafter,” and is also overbroad in that he continued to be employed as a mail carrier after requesting religious accommodation, so a listing of “any actions” he took after such a request, would require a complete list of all his job duties and activities. Without waiving this objection, Plaintiff answers below, including actions taken with respect to seeking religious accommodation:

I was hired as a Temporary Relief Carrier (TRC) at the Quarryville, PA Post Office by Postmaster Steve Hartnett (now deceased) on November 20, 2010. I worked at Quarryville until October 1, 2011 when I voluntarily resigned from my position in order to pursue further schooling.

I was rehired as a Temporary Relief Carrier (TRC) at the Quarryville Post Office on April 7, 2012 by the new Postmaster (Patricia “Trish” Wright). She was so pleased with my work, that she personally told me of an opportunity for advancement if I were to apply at the Paradise, PA Post Office for an open position as a Rural Carrier Associate (RCA).

I completed the exam (Postal Exam 473) and was promoted to Rural Carrier Associate (RCA) at Paradise on July 14, 2012 by Postmaster Andrea Eckert. This was essentially the same job duties of rural carrier delivery, but a permanent (rather than temporary) position with a significant pay raise. To this time in my employment history, there had been no mention, nor requirement, for work on Sundays for Amazon or otherwise.

I first began to hear rumors of Sunday work as a possibility during my initial time (2014) at the Quarryville Post Office. It was during the approximate Christmas 2015 time period (mid-November to early January) where the substitute carriers (RCAs) like myself were first required to work on Sundays for Amazon delivery as assigned to report to the Lancaster Carrier Annex (Lancaster, PA) on a rotating basis. For that Christmas time period, all RCAs were added to a rotating schedule of Sundays that they were mandated to report for Sunday duty. My Postmaster (Patricia Wright) was able to exempt me from this rotation upon my request and did not require me to report for Sunday Amazon duty. She did, however, ask me to pick up additional shifts or work whenever necessary instead. For example, when we were shorthanded during the week or on a Saturday, rather than assign that extra work to another substitute, she would assign that work to me to make up for not working on Sundays.

The following year (2016) however, this same Postmaster (Patricia Wright) told me she would not tolerate my exemption from Sunday Amazon work again for Christmas 2016, and instead I would either need to submit to working on Sundays OR find work elsewhere. I took this threat seriously, and began to pursue employment opportunities elsewhere, either

within the USPS system or beyond. I discovered during this time period (summer 2016) that the Holtwood, PA Post Office was exempted from Amazon Sunday work because it is a much smaller post office than Quarryville. Therefore, on July 22, 2016, I submitted my request for transfer from Quarryville, and on August 20, 2016, I officially transferred to the Holtwood, PA Post Office as a Rural Carrier Associate (RCA). However, the consequence of Postmaster Patricia Wright's ultimatum that I submit to Sunday Amazon work or find another job was that my transfer forced me to forfeit all seniority that I had in the postal system by leaving Quarryville. It is postal policy that seniority (used for promotional purposes) is based upon time spent in a particular office. At Quarryville I was second in-line for promotion for any available position, including Full-Time Carrier (known as Regular Carrier) with a dramatic pay increase and government benefits/pension. By submitting to her demand to leave my ranking position at Quarryville, I had to restart from the bottom as junior RCA at Holtwood without rank or realistic opportunity for promotion at that immediate time. Eventually, the two senior RCAs at Holtwood transferred or resigned their positions, and I became the ranking RCA at Holtwood. For Christmas 2016, however, I was exempted from Amazon Sunday delivery simply because Holtwood Post Office was not required to do so at that time.

In March 2017, however, the USPS changed its policy in our delivery area to require that all substitute carriers (like myself as an RCA) be mandated to report for Sunday Amazon delivery. A volunteer list was produced so that those who were particularly interested in Sunday work could offer themselves first as eligible for overtime, etc. but so few signed up as

volunteers that instead a mandate was given by postal management that ALL substitute carries would have to report for Sunday duty on a rotating basis. Of course, I had declined as a volunteer for Sunday work when offered the list by Brian Hess, my postmaster at Holtwood Post Office. It was at this time, I began to be told to report as scheduled for Sunday work at the Lancaster Carrier Annex (the postal hub for my area, located in Lancaster, PA) for which I declined to work on the grounds that I am a Christian, and could not dishonor the Lord's Day for the sake of Amazon package delivery. I communicated this very clearly to my postal supervisors, both at Holtwood Post Office and to management at the Lancaster Carrier Annex. The managers at the Lancaster Carrier Annex included: Diane Evans (Postal Supervisor, directly in charge of Sunday/Holiday Amazon delivery for our area each week); Aaron Zehring (LCA Station Manager, essentially next-in-command); and Doug French (Postmaster at the Lancaster Carrier Annex--who has since moved on to the Harrisburg Postal P&DC I believe). Brian Hess (my postmaster at Holtwood) corresponded quite a bit with these Lancaster supervisors about my religious position and verbal request for religious accommodation, but I was never privy to these managerial conversations via phone and email. I explained quite clearly to Hess that I am a Christian and believed in keeping the Lord's Day. He chose to act as my "voice" throughout this entire experience, and I was never given the opportunity to explain my request or position to any member of postal management until January 2018 when I was asked to provide my first written request for reasonable accommodation to Lyle Gaines, District Manager of Labor Relations. Everything up until January 2018 had been verbal communication between myself and Brian Hess

to explain my beliefs and request for religious accommodation.

Since I began to accrue Unexcused Absences as early as March 2017 for failure to report to Sunday Amazon duty at the Lancaster Carrier Annex, I was summoned for my first Pre-Disciplinary Interview (PDI) on April 5, 2017 with Aaron Zehring (Station Manager for Lancaster). During the course of this meeting, I clearly stated my faith and request for religious exemption from Sunday duty to Aaron. I had a representative present from the NRLCA (National Rural Letter Carrier Association/Rural Carrier Postal Union) as a non-speaking witness at this and all subsequent PDI meetings. I made it clear that I must be exempted from working at all on a Sunday because it is the Lord's Day and must be honored as unique and special as unto the Lord for a day of worship and rest to honor Him. I brought my Bible with me, and read from Exodus regarding the 10 Commandments, of which Aaron said he was already familiar with that portion of scripture and seemed to understand my viewpoint. He went on to urge alternative arrangements for duty, such as to report on Sundays after church OR to take my Lord's Day on another day of week instead (and still work on Sundays for Lancaster). I responded that his proposal was missing the "spirit" of keeping the Lord's Day on Sundays--the accepted day of Christian worship and rest. To come in after church misses the point of keeping the WHOLE day as worship for the Lord and a day of rest. To take a different day of the week as the Lord's Day also precludes me from worshiping with my peers at church and spending time with my family/friends in fellowship--a vital part of the Christian faith. I felt he was asking me to change my religious beliefs in order to keep working for USPS.

Subsequent to this PDI meeting, there was no discipline issued, but I continued to accumulate unexcused absences as the Lancaster Carrier Annex did not exempt me from being scheduled for Sunday Amazon work. I knew I could be written up at any time.

In the same vein, I was again called to the Lancaster Carrier Annex (LCA) for a second PDI on May 10, 2017 to again answer for missed Sunday work. This time I met with Diane Evans (the Lancaster Sunday Amazon Supervisor). I again explained to her my stance on Sunday work, but she was very hostile--asking me only a few pro-forma questions about why I was absent, did I understand postal policy, etc. I explained clearly to her, as I did with Aaron Zehring before, about my religious stance. After this meeting, however, I was issued a Letter of Warning dated June 9, 2017---my first discipline during my postal career. The charge on the disciplinary letter is listed as "Unsatisfactory Attendance-Failure to be regular in Attendance" and it cites absences on three Sundays (April 16, 23, and May 7, 2017). The union representative was also present on this occasion as a non-speaking witness---recording the conversation to the best of her ability.

I continued to refuse to work on scheduled Sundays at Lancaster, and therefore I was again called for a PDI on July 3, 2017 with Treva Morris (Postal Supervisor, Lancaster Carrier Annex). I once again explained to another member of Postal management very clearly that I cannot work on Sundays because it is the Lord's Day and again requested a religious accommodation to be exempted from being scheduled on such days. A union rep. was present, and no discipline was issued this time.

During the course of these events, I was still working at Holtwood Post Office regularly. As I men-

tioned earlier, Brian Hess served as my “go-between” for all communication with Lancaster Carrier Annex and the postal management there. With the exception of the PDI meetings I had with these managers, I had no communication or chance to explain myself or refute any statements being made. It was during this time period that I remember Brian Hess having a phone conversation with postal management. He then approached me outside while I was loading my vehicle for mail delivery, and he questioned me about whether I was making the right decision in regards to my faith. He suggested I should talk to my pastor to see if I really shouldn’t work on Sundays because some people are willing to work on the Lord’s Day. I explained to him that I believe I must honor the Lord first and foremost, including the keeping of the Lord’s Day, even if there are negative consequences like being disciplined at work or maybe losing my job. I said it was not my intention to defy his authority, nor that of the Lancaster management, but when I was pushed into a corner and asked to choose between honoring an earthly authority (my bosses) or God’s authority, I must choose to honor God---and that means keeping the Lord’s Day by not working on Sunday. I remember his next statement because it struck me to the core. Brian said that postal management are considering making an example of me and they intend to skip the normal disciplinary process steps and go directly to suspension and termination. In other words, he said, I could be suspended and fired within a matter of weeks. Although this happened quite a while ago, I remember that day clearly because I lost some sleep over that statement wondering what cost I would truly have to pay for standing up for God in this. I was stunned my employer would do something like this to me---a model

employee for all this time---and I was truly upset, hurt and anxious about how things would progress.

I continued to be unable to work on Sundays, and it began to become routine at this point to be summoned for a PDI at Lancaster after missing about three Sundays or so. I had my fourth PDI on August 9, 2017 with Diane Evans again. Our conversation was more relaxed this time now that my “reputation” had gotten around the postal circles about my refusal to work on Sundays and my reasons for doing so because of my faith. She understood by now that I was not going to report for any Sunday as scheduled, but she did ask that I would begin calling in on the day or morning before my scheduled shift to formalize my absence. From this point onward, I generally called her office early on Saturday mornings (when I was scheduled for the next day, Sunday). She did not have voicemail, so I could not leave a message if no one answered the phone. I generally tried a few times but was not always able to get an answer. I did, however, generally speak to Diane on a regular basis. I was humble each time, and just told her that I would not be reporting on Sunday as scheduled because I am a Christian, and I believe that it is not right for me to work on the Lord’s Day. I understood that Diane had to shuffle route assignments in order to adjust for the absence of an employee that day and I apologized to Diane on more than one occasion saying something like “Diane, I know that my absence might make things a bit more troublesome for you, and for what it’s worth, I am truly sorry for causing you any difficulty. It is never my intention to defy your authority, nor to make your job more difficult for you. I simply must honor what I believe, and that is that Sundays are for God and I must respect that by not working on the Lord’s Day. When I was hired, we never spoke of Sunday work or

I wouldn't have taken this job in the first place for that reason. Now I am stuck in between pleasing God and pleasing postal management, and I must choose God!" She told me during one conversation that it wasn't too big of a deal anymore because she knew I would not be reporting for the shift, so she simply skipped to the next person. No discipline was issued. Union representation was present during the meeting as a non-speaking witness again.

Again, I was called for a PDI with Diane Evans on October 3, 2017. The meeting went much like before---more of a formality---with union representation again as a non-speaking witness. No discipline was issued once again.

For the 2017 Christmas season (mid-November 2017 to early January 2018) there was a big change in our area. Beginning in mid-November 2017, the Lancaster Carrier Annex (or "hub station") would break down and no longer host Sunday Amazon deliveries. Instead, the Sunday Amazon deliveries would continue, but at each local post office location---Holtwood Post Office included this time. We had three RCAs (or sub carriers) who would be affected by this new development at Holtwood as they were scheduled to cover Sunday Amazon work on a rotating basis. These three employees included myself, Justin Tekeley, and a new employee named Sheila Moyer. Brian established a schedule that rotated each one of us through Sunday assignments during the Christmas period. Justin appeared ready to cover his assigned work without question. Sheila told myself and Brian that since she wasn't getting much work (as a new RCA she wasn't trained on many routes yet) she would be happy to cover my assigned Sundays to help me out. Unfortunately, between her statement and the actual

day of her covering for me, Sheila incurred an on-the-job injury while working at the Strasburg, PA Post Office and was out for a matter of months to have reconstructive surgery on her ankle.

As a direct result of this 2017 Christmas season at Holtwood, and the Sundays I did not work, Brian Hess summoned me for a Pre-Disciplinary Interview (PDI) on December 20, 2017 to answer for my absences on two Sundays (December 3 and 17, 2017). My union representation was present as before, and I gave a very clear statement formalizing for the record once again that I could not work on Sundays because of my faith to keep the Lord's Day in its entirety. Subsequently, Brian issued a 7-Day Paper Suspension for a charge of Improper Conduct dated January 2, 2018. Although I did not incur any loss of work or wages for this discipline, the USPS states that I must consider this punishment as gravely as if it were a true suspension ---punitive in nature---and that they had every intention of further discipline if I did not conform to postal attendance policy from this point forward.

Nevertheless, my conscience would not permit me to work on Sundays. At this point, the regular Sunday Amazon deliveries out of the Lancaster Carrier Annex had resumed as before Christmastime. I was once again scheduled on a rotating basis to report to Lancaster for duty. Amazon deliveries are also mandated for all holidays, including Easter Sunday. With the exception of Easter, I was compliant with all scheduled holidays throughout my postal career. I reported to Lancaster Carrier Annex whenever I was scheduled for the non-Sunday holiday duty, and delivered all my assigned parcels to the best of my ability and without complaint.

During this time period around the Christmas 2017 season (and onward) Brian Hess (my postmaster at Holtwood) became particularly antagonistic towards me in the workplace. He always found ways, for example, to give me more work than the other rural carriers assigned that day. On a heavy mail day, he would allow the other two carriers to curtail mail (leave some at the office for the next day) but he always commanded me to take everything for my route that day, even to the point it would put me an hour or so behind everyone else. The other staff noticed this behavior and commented on it on more than one occasion that it wasn't right or appropriate---definite disparate treatment in the eyes of all involved. On another occasion that happened to be a Veteran's Day (notoriously heavy mail/parcel day) when all three RCAs were assigned to work at Holtwood. Brian went out of his way to load his own car with multiple trips of parcels from both Sheila's route and Justin's route, but did not offer me any assistance at all. He claimed in subsequent EEO reports that he was helping them because they were new, but Justin had been working for our office for almost a year by that point and Sheila's route was the shortest in the office. I had a load that was one of the biggest mail days I can remember in my career, but I was offered no assistance. If that happened only once, I would have shrugged it off, but this became a pattern of disparate treatment that began to seem like a vendetta against me because of my perceived lack of cooperation in regards to Sunday work. Eventually Brian began to make negative comments in the workplace towards me. On one occasion, I mentioned to Brian that my postal ID had expired. He took my photo and issued a new ID, but in doing so, he commented that my picture reminded him of the men on the front of that day's

newspaper (who happened to have been arrested for sexual deviancy in the local park). When I offered no response (I said nothing and just faced forward and continued to work) he said it again louder and each time he laughed hysterically. This was an attempt at character assassination or an effort to humiliate me in front of my co-workers---two of them being women that day. I knew at that point that Brian resented me and harbored anger toward me due to not working on Sundays. This comment, amongst others, really seemed like a directed attack against me that I perceived as workplace harassment and retaliatory behavior because Brian was upset with me for not working Sundays. This negative attitude from Brian continued for the rest of my postal career at Holtwood Post Office. Brian would always find ways within the framework of postal duties to cause me difficulty or extra work. He would send me out on multiple trips in a very bad snowstorm. He knew our local delivery area had many accidents that day, but he still instructed me to go back out---not once, but twice---to perform extra duties. He continued to give me all the mail to take each shift I worked while others were allowed to curtail. He docked my pay on more than one occasion without explanation. He refused to approve my requests for leave to attend family weddings, family Christmas parties, family vacations, etc. perhaps out of spite because he knew my family was important to me as I often spoke of this in the workplace. Other derogatory comments were made as well, but they were less pointed than the aforementioned and more easily shrugged off. Essentially, my workplace went from a generally enjoyable experience to one that I dreaded each shift for the negative, miserable situation it had become. I was unfairly harassed and treated with disdain each time I came to work. This

caused a great deal of stress, which had a profound effect on my health (e.g. weight gain, chronic insomnia, hair loss, anxiety, and other related symptoms). I could not seek medical attention, as the minimal health coverage offered to part-time postal employees specifically excludes mental health services and treatment.

Once again, after I missed more Sundays, Brian Hess summoned me for another PDI on February 8, 2018 at the Holtwood Post Office. Although my absences had occurred at the Lancaster Carrier Annex in this case, Brian was now handling the disciplinary matters from this point onward. My union representative was again present in a non-speaking witness fashion, and no discipline was issued at this time.

From that PDI until the Fall of 2018, I continued to be absent for every Sunday that I was scheduled for Amazon delivery. Nevertheless, I was not called for another PDI until September 6, 2018 again at the Holtwood Post Office with Brian Hess and my union rep. present as a witness. In this case, Brian eventually issued a 14-day Paper Suspension on October 5, 2018 with the charge of Unsatisfactory Attendance for three Sunday absences (dated June 17, August 12 and 26, 2018). In this meeting, as always, I clearly explained my religious stance, which by now had become quite familiar to all involved.

From that point onward, I continued to work faithfully at the Holtwood Post Office. Sheila had quit some time ago after securing another job elsewhere during her medical leave. Justin transferred to another post office in Spring 2018, as I recall, so I was once again the only RCA in that office for most of the year. In the time period following my PDI and 14-day Suspension in October 2018 and around mid-

November 2018, I continued to accrue unexcused absences for failure to work Sundays at the Lancaster Carrier Annex, but I was not called for further PDIs or issued further discipline.

Brian was finally able to hire a new RCA named Valerie, who was perfectly willing to cover all the Sunday Amazon work for Christmas 2018-2019 in the Holtwood Post Office without complaint. I did not work any Sundays during that Christmas season and did not receive any discipline during that time because Valerie covered my scheduled shifts.

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL RURAL LETTER CARRIERS'
ASSOCIATION

Sunday/Holiday Parcel Delivery Work List

The parties recognize the importance of successfully implementing the continued expansion of Sunday/holiday parcel delivery service, which began testing in October, 2013. The parties agree that rural carrier leave replacements will be assigned, as appropriate, to complete Sunday/holiday parcel deliveries.

In order to have sufficient rural carrier leave replacements available to complete Sunday/holiday parcel delivery, a Sunday/Holiday Parcel Delivery Work List will be established for part-time flexible rural carriers (PTF), substitute rural carriers, rural carrier associates (RCA) and rural carrier relief employees. Assistant rural carriers (ARC) will not be included on the Sunday/Holiday Parcel Delivery Work List as these employees are hired specifically to work on Sundays and holidays. This list will be established within thirty (30) days of the effective date of this memorandum of understanding (MOU). Future lists will be established during the same time periods as the relief day work list (Article 8.5.A), and each new list shall supersede the previous list.

There will be no Sunday/Holiday Parcel Delivery Work List utilized upon collapse of the hub concept during peak season. Management will utilize ARCs first; then utilize leave replacements within their own offices and then may borrow leave replacements, as needed, to

complete Sunday/holiday parcel delivery during the hub collapse.

To establish the initial Sunday/Holiday Parcel Delivery Work List, the NRLCA District Representative or designee, and a Postal Service representative designated by the District Manager Human Resources, will create a listing of all available part-time flexible rural carriers, substitute rural carriers, rural carrier associates (RCA), and rural carrier relief employees assigned to the hub location, including stations, branches, and any remotely managed post office(s); associated 'spoke' offices; and nearby rural delivery post offices, as determined by the parties' representatives. Each available leave replacement on this listing will then indicate his/her desire to work or not work on Sundays and holidays, accordingly. Once the signing period is complete, the list will be separated and alphabetized, by last name, regardless of seniority, classification or the assigned office. One list will include all volunteer leave replacements as identified above, and the second list, non-volunteer leave replacements. The initial list should be amended as new RCAs are appointed and/or PTFs, substitute rural carriers, RCAs, or rural carrier relief employees are separated or converted to regular rural carrier. If necessary the parties' representatives may reconvene in advance of a Sunday/Holiday Parcel Delivery Work List posting to ensure all leave replacements are properly annotated.

Newly hired RCAs will be afforded the opportunity to place their name on the Sunday/Holiday Parcel Delivery Work List as volunteers within sixty (60) days of hire. If these rural carriers choose not to sign the volunteer list at this time, they will be placed on the non-volunteer list.

When it is necessary to schedule rural carrier leave replacements for Sunday/holiday parcel delivery, management will first utilize any ARCs assigned to the hub location or associated 'spoke' offices. If there are no ARCs assigned to these locations or an insufficient number of ARCs, management at the hub location will then select leave replacements from the volunteer list on a rotating basis. If there is an insufficient number of leave replacements on the volunteer list, management will schedule leave replacements from the non-volunteer list, also on a rotating basis.

Rural carrier associates serving vacant regular routes or serving regular routes during the extended absence of the regular carriers, including the first ninety (90) days before becoming a Designation 74-0, will not be scheduled for Sunday/holiday parcel delivery unless all leave replacements from both the volunteer and non-volunteer lists are scheduled. Leave replacements on both the volunteer and non-volunteer Sunday/Holiday Parcel Delivery Work Lists will be bypassed in the rotation if the leave replacement has approved leave or an approved non-scheduled day adjacent to Sunday or the holiday. However, the leave replacement on the Sunday/Holiday Parcel Delivery Work List may notify management in writing that he or she does not wish to be bypassed in this circumstance, provided notice is given at the time the leave is requested. In addition, management may bypass leave replacements for Sunday/holiday parcel delivery if such assigned work hours would result in the leave replacement exceeding 40 hours at the end of the work week.

This agreement is reached without prejudice to the position of either party in this or any other matter and does not set precedence in same or similar issues in

the future. Either party may terminate this agreement by providing 30 days written notice to the other party.

/s/ Cathy M. Perron

Cathy M. Perron

Manager

Contract Administration (NRLCA)

U.S. Postal Service

/s/ Jeanette Dwyer

Jeanette Dwyer

President

National Rural Letter Carriers' Association

Date: 5/24/2016

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
UNITED STATES POSTAL SERVICE
AND THE
NATIONAL RURAL LETTER CARRIERS'
ASSOCIATION

The parties recognize that during the 2016 holiday season, the Postal Service is experiencing a continuing increase in parcel business. In order to fulfill our service commitments to our customers during this season, the parties have agreed to a limited modification to Article 8.1, which prohibits regular rural carriers working on Sunday.

For the following Sundays, December 4, 11, and 18, 2016, regular rural carriers may volunteer to work on Sunday. Managers will ask for volunteer regular rural carriers who wish to work on these three Sundays. Volunteering to work on these identified Sundays does not provide a guarantee or entitlement to work on these days. Regular rural carriers who volunteer may be utilized, as needed, to deliver packages on any route(s) in the office.

Prior to scheduling a regular rural carrier who has volunteered for Sunday work as identified in this MOU, management must first schedule all assistant rural carriers (ARCs), who are assigned to either the hub or associated spoke offices, and then all available leave replacements in the office, including stations, branches, and any remotely-managed post offices (RMPO). Volunteer regular rural carriers will be scheduled for Sunday work on a rotating basis by seniority following the scheduling of ARCs and leave replacements as outlined above.

If, after all volunteer regular rural carriers in the office are working on Sunday, there is still a need for additional rural carriers management may borrow leave replacements from other offices.

Regular rural carriers will be compensated at the overtime rate pursuant to Article 9.2.A.1.k., for hours worked on the Sundays listed above. Sunday work hours are to be recorded in the Actual Weekly Hours block on PS Form 1314 and also annotated in the Daily Overtime block.

The provisions set forth in this MOU are limited to the Sundays as specified above and will not set precedence in same or similar issues in pending grievances or in the future. Additionally, these provisions will not be cited by either party in any collective bargaining proceedings to include negotiations, national level grievances, rights and interest arbitration.

/s/ Cathy M. Perron
Cathy M. Perron
Manager
Labor Relations
U.S. Postal Service

/s/ Jeanette Dwyer
Jeanette Dwyer
President
National Rural Letter Carriers' Association

Date: 12/1/2016

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From: Gaines, Lyle V - Harrisburg, PA

Sent: Tue Jul 31 14:38:52 2018

To: Hess, Brian M; Brodbeck Jr, John W - Lancaster, PA; Zehring, Aaron S - Lancaster, PA

Cc: Breymaier, Susan X - Memphis, TN

Subject: RE: Gerald Groff religious accommodation request update

Importance: Normal

Attachments: image001.png

The understanding is that we would solicit for volunteers and document it. If no volunteers are available he is required to work. How you schedule is how you schedule. We only have an obligation to solicit for volunteers. If there are none then he has to work. You are not required to overschedule non volunteers to accommodate. Please include our attorney on all communications related to this employee.

Lyle V. Gaines
Manager Labor Relations
United States Postal Service
1425 Crooked Hill Road | Harrisburg PA 17107-9998 |
work 717-257-2274 | cell 717-307-8071
lyle.v.gaines@usps.gov<mailto:lyle.v.gaines@usps.gov> |
fax 650-578-3354

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From: Hess, Brian M

Sent: Tuesday, July 31, 2018 10:24 AM

To: Brodbeck Jr, John W - Lancaster, PA <john.w.brodbeck.jr@usps.gov>; Zehring, Aaron S - Lancaster, PA <Aaron.S.Zehring@usps.gov>; Evans, Diane M - Lancaster, PA <Diane.M.Evans@usps.gov>; Miller, Kelly M - Peach Bottom, PA <Kelly.M.Miller@usps.gov>

Cc: Gaines, Lyle V - Harrisburg, PA <lyle.v.gaines@usps.gov>; Hess, Brian M <Brian.M.Hess@usps.gov>

Subject: Gerald Groff religious accommodation request update

Importance: High

Just wanted to make sure we are all on the same page with the religious accommodation request submitted by Gerald Groff for Sunday Amazon delivery.

In order to be in compliance with the labor contract and EEO requirements it is necessary that a documented search is completed every week to seek a RCA volunteer the Sundays that Gerald Groff is scheduled. The weeks that Gerald is scheduled I have been sending an email to the supervisors/postmasters of the RCAs that are not scheduled for that Sunday seeking a volunteer.

If no RCA is willing to volunteer for Gerald Groff then the disciplinary process would be implemented. The two keys for the discipline to stand is that we would need to show every effort was made to seek a volunteer and that Gerald Groff's refusing to work is causing an undue hardship/burden on the USPS.

It is my understanding that when the Lancaster Carrier Annex Amazon Sunday Hub schedule is

created the weeks that Gerald Groff is scheduled that an extra RCA is automatically scheduled to cover his parcel route. This satisfies his religious accommodation request for Sundays and no disciplinary action is needed.

I understand the thought process of automatically scheduling an extra RCA. The dilemma is that a volunteer RCA is not needed since an RCA is already prescheduled and it does not show a hardship/burden to the USPS because it is not necessary to force an RCA to work on their Sunday off.

I cannot justify seeking a volunteer, only to be told that Gerald Groff's route is already covered by an RCA that was already prescheduled. The two solutions would be discontinue prescheduling the extra RCA or I continue to seek an RCA volunteer the weeks Gerald Groff is scheduled and you have additional help that week.

Thank You for your attention to this matter. Any feedback is welcome.

Brian M. Hess
Postmaster
Holtwood Post Office
55 Drytown Rd
Holtwood, PA 17532
717-284-2850
[USPS Logo]<<https://www.usps.com/>>

From: Gaines, Lyle V - Harrisburg, PA

Sent: Thursday, June 7, 2018 12:46 PM

To: Hess, Brian M <Brian.M.Hess@usps.gov<<mailto:Brian.M.Hess@usps.gov>>>

Cc: Mccabe, Suzanne B - Philadelphia, PA <Suzanne.B.Mccabe@usps.gov<<mailto:Suzanne.B.Mccabe@usps.gov>>>

318

gov>>; Breymaier, Susan X - Memphis, TN
<susan.x.breymaier@usps.gov<mailto:susan.x.breymaier@usps.gov>>

Subject: RE: Gerald Groff update / IMIP Advice

You will have to canvas all RCAs on the list that are non-volunteers EACH WEEK. You will have to track your efforts in case an EEO is filed. Tell Mr. Groff that you will try and find volunteers each week within the Hub.

Lyle V. Gaines
Manager Labor Relations
United States Postal Service
1425 Crooked Hill Road | Harrisburg PA 17107-9998 |
work 717-257-2274 | cell 717-307-8071 |
lyle.v.gaines@usps.gov<mailto:lyle.v.gaines@usps.gov> |
fax 650-578-3354

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From: Hess, Brian M

Sent: Tuesday, June 05, 2018 10:04 AM

To: Gaines, Lyle V - Harrisburg, PA <lyle.v.gaines@usps.gov<mailto:lyle.v.gaines@usps.gov>>

Subject: Gerald Groff update / IMIP Advice

Lyle,

Just wondering if you have any updates on Gerald Groff's religious accommodation request?

319

Brian M. Hess
Postmaster
Holtwood Post Office
55 Drytown Rd
Holtwood, PA 17532
[USPS Logo] <<https://www.usps.com/>>

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

No. 19-CV-1879

GERALD E. GROFF,

Plaintiff,

v.

MEGAN J. BRENNAN, POSTMASTER GENERAL,
UNITED STATES POSTAL SERVICE,

Defendant,

PLAINTIFF'S RESPONSE TO DEFENDANT'S
STATEMENT OF FACTS

NOW COMES Plaintiff, Gerald E. Groff, by and through undersigned counsel, who hereby submits this response to Defendant's Statement of Facts, ECF No. 36-1, as follows:

OBJECTIONS

The majority of Defendant's proposed facts are either redundant or contrary to the Joint-Stipulation of Undisputed Facts, ECF 36-1. Nothing in Plaintiff's responses shall be construed as amending or waiving the Joint-Stipulation of Undisputed Facts.

RESPONSES

1. Agree.
2. Agree in part and disagree in part. Groff testified that the Bible allows acts of necessity on the Sabbath—such as medical care and eating—but he expressly testified that delivering Amazon packages

was *not* an act of necessity: “I don’t see the Amazon delivery of packages appropriate Sunday work because that is not a deed of necessity; it’s a deed of convenience.” [Def. Ex. B at 29:14-25 to 30:1-5]. Groff never said that the Government may decide what is a necessity, but made clear that any act of necessity must be in “the spirit” of what the Bible describes, such as medical care and eating. [Def. Ex. B at 30:14-22]. Groff further points out that his Sabbatarian practice is informed by *Jeremiah* 17:19-27 and *Nehemiah* 13:19, which expressly condemn the transporting of “loads” or the carrying of “burdens” on the Sabbath. [Pl. Br. at 3, ECF 37-1].

3. Disagree. From the transcript as cited by Defendant, Groff did not view his employment with the USPS as being inconsistent with his obligation to “do the Lord’s work,” specifically, by trying “to be an example of Christ and try to help people,” so that he was “liv[ing] my faith in the workplace as well” by virtue of being a good example. [Def. Ex. B at 313:13-16 (alteration added)]. Groff did not look for other employment, because he believed that working for the USPS was the place the Good put him to work for the time being. [*Id.* at 318-24-25 to 319:1].

4. Factually agree but disagree as to materiality. Groff expressly testified that watching TV on Sunday was not inconsistent with observing the Sabbath, “Because for me, that’s a way for me to spend time with my father, which I consider fellowship.” [Pl. Ex. C at 278:22-25 to 279:1]. Because that activity poses no inconsistency with his religious beliefs, then it is immaterial and has no impeachment value. Groff has consistently testified that observing the Sabbath means refraining “from secular labor on the Sabbath.” [Def. Ex. C at 8]. Watching TV is not “secular labor.”

There is no inconsistency but, even if that were not so, “religious beliefs need not be acceptable, logical, consistent, or comprehensible to others in order to merit First Amendment protection.” *Thomas v. Review Bd.*, 450 U.S. 707, 714 (1981).

5. Factually agree but disagree as to materiality and admissibility. On Pages 14 and 15 of Defendant’s Brief, Defendant concedes that Groff was qualified for his position as an RCA. Defendant further stipulated (1) that an RCA is generally an entry-level position; (2) that Groff had been in its employ for approximately 6.75 years, and (3) other than the issue of working on Sundays, “Groff otherwise had an excellent performance as an RCA, being a good and efficient employee.” [J.S. Fact Nos. 4, 6, 21, 38]. Consequently, any pre-USPS jobs or educational attainments are immaterial. Plaintiff further objects as inadmissible under Fed. R. Civ. P. 56(c)(2); Fed. R. Evid. 402; Fed. R. Evid. 403. Any pre-USPS jobs or educational attainments are of no consequence, confusing of the issues, misleading to the jury, a waste of time, or unfair prejudice by improperly suggesting that 6.75 years of dedicated service to the USPS was not a long-term commitment or improperly fostering an irrational animus against religion, namely, that volunteering for religious causes somehow renders someone unsuitable for, or uncommitted to, secular careers.

6. Factually agree with the qualification that the dates are approximations, but disagree as to materiality and admissibility. On Pages 14 and 15 of Defendant’s Brief, Defendant concedes that Groff was qualified for his position as an RCA. Defendant further stipulated (1) that an RCA is generally an entry-level position; (2) that Groff had been in its employ for approximately 6.75 years, and (3) other than the issue

of working on Sundays, “Groff otherwise had an excellent performance as an RCA, being a good and efficient employee.” [J.S. Fact Nos. 4, 6, 21, 38]. Consequently, Plaintiff objects as inadmissible under Fed. R. Civ. P. 56(c)(2); Fed. R. Evid. 402; Fed. R. Evid. 403. Any pre-USPS jobs or educational attainments are of no consequence, confusing of the issues, misleading to the jury, a waste of time, or unfair prejudice by improperly suggesting that 6.75 years of dedicated service to the USPS was not a long-term commitment or improperly fostering an irrational animus against religion, namely, that volunteering for religious causes somehow renders someone unsuitable for, or uncommitted to, secular careers.

7. Same response and objections as No. 6.
8. Same response and objections as No. 6.
9. Same response and objections as No. 6.
10. Same response and objections as No. 6.
11. Same response and objections as No. 6.
12. Same response and objections as No. 6.
13. Reference should be made to Nos. 3-4 of the Joint-Stipulation of Undisputed Facts, ECF No. 37-3.
14. Reference should be made to No. 5 of the Joint-Stipulation of Undisputed Facts, ECF No. 37-3.
15. Agree, subject to a qualification that the record shows that Groff was not required to work Sundays prior to 2015. [Pl. Br. 2-3, ECF 37-1].
16. Agree.
17. Agree, subject to a qualification that reference should be made to Nos. 45 and 49 of the Joint-Stipulation of Undisputed Facts, ECF No. 37-3.

18. Object as inadmissible hearsay under Fed. R. Civ. P. 56(c)(2); Fed. R. Evid. 802.

19. Agree.

20. Agree.

21. Agree in part and disagree in part. By its own terms, as the record is cited by Defendant, the MOU required existing RCAs to begin Amazon deliveries within 30 days of the signing of the MOU and newly-hired RCAs to begin Amazon deliveries within 60 days of the signing of the MOU. Plaintiff agrees with the balance.

22. Reference should be made to Nos. 8 through 11 of the Joint-Stipulation of Undisputed Facts, ECF No. 37-3.

23. Same response as No. 22.

24. Same response as No. 22.

25. Same response as No. 22.

26. Agree.

27. Disagree. From the record as cited by Defendant, Groff testified about the Quarryville Post Office as to the year 2015 and recalled six mail routes and did not recall the number of RCAs. Plaintiff objects to the lack of personal knowledge in the Hess Declaration but, if the Court disagrees, then Hess only describes the number of RCAs and mail routes for the years 2015 and 2016, and not for any other year. [Hess Declaration ¶ 5]. Hess does not describe how he acquired personal knowledge on the matter.

28. Agree.

29. Agree in part and disagree in part, and Plaintiff objects where the evidence cited is inadmissible under

the parol evidence rule. The MOU authorizes “approved leave” [Def. Ex. D, at USPS265] and Defendant cannot lawfully contract away Title VII rights. Therefore, Plaintiff agrees that postmasters had discretion to approve leave for Title VII religious accommodations, but this remained unchanged before and after the MOU. Plaintiff objects to the reliance on the Hess Declaration for lack of personal knowledge, as stated in the Response to No. 27. Furthermore, oral testimony by Brian Hess may not be offered to vary or contradict the terms of the MOU under the parol evidence rule, and cannot be considered. *Bonilla v. City of Allentown*, 359 F. Supp. 3d 281, 298 n.18 (E.D. Pa. 2019); Fed. R. Civ. P. 56(c)(2).

30. Disagree. Postmaster Patricia Wright gave no explanation for revoking Groff’s religious accommodation and said, “I’m not going to put up with this shit again this year.” [Pl. Br. at 4, ECF 37-1].

31. Agree in part and disagree in part. Disagree that the transfer was voluntary, where precipitated by an unjustified revocation of Groff’s religious accommodation. [Pl. Br. 4-5, ECF 37-1]. Agree to the balance.

32. Agree as to the Holtwood Post Office, but disagree as to any comparison to Quarryville for the same response and objections in No. 27. Plaintiff further disagrees as to materiality where Defendant did not offer to accommodate Plaintiff by allowing his transfer to Quarryville Post Office.

33. Agree.

34. Agree.

35. Reference should be made to No. 13 of the Joint-Stipulation of Undisputed Facts, ECF No. 37-3.

36. Reference should be made to No. 14 of the Joint-Stipulation of Undisputed Facts, ECF No. 37-3.

37. Reference should be made to No. 17 of the Joint-Stipulation of Undisputed Facts, ECF No. 37-3.

38. Factually agree but subject to a qualification that Hess was a churchgoer at the time of his deposition, not while the Holtwood Postmaster. He testified that he worked every Sunday for the past two years preceding his deposition. [Pl. Ex. G at 97:17-20, 100:17-24]. Plaintiff further disagrees as to materiality. The record does not show that Brian Hess was the same religious denomination as Groff, and if this fact is offered to show that Hess had no hostility against Groff on account of Groff's religion, then the same is disputed based on Groff's deposition testimony to the contrary. Even if Hess was the same denomination, "Intrafaith differences of that kind are not uncommon among followers of a particular creed, and the judicial process is singularly ill equipped to resolve such differences," and where "the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect." *Thomas v. Review Bd.*, 450 U.S. 707, 715-16 (1981).

39. Agree.

40. Agree in part and disagree in part. Disagree that Groff indicated his intent to resign. From the deposition testimony as cited by Defendant, Groff testified, "Initially I considered doing that" if he was not accommodated. [Def. Ex. B at 203:2-4]. Groff instead "opted to go through the disciplinary process" if the USPS would not grant his accommodation request. [Def. Ex. D at USPS1524]. Agree as to the balance.

41. Reference should be made to Nos. 42 through 44 of the Joint-Stipulation of Undisputed Facts, ECF No. 37-3.

42. Agree.

43. Reference should be made to No. 22 of the Joint-Stipulation of Undisputed Facts, ECF No. 37-3.

44. Agree.

45. Factually agree, but disagree as to materiality. Defendant did not insist on having the letter as a condition precedent for granting a religious accommodation and, as shown in No. 44, management was satisfied on the sincerity of Groff's religious beliefs.

46. Agree.

47. Agree.

48. Factually disagree, and disagree as to materiality and admissibility. Hess testified by deposition that soliciting volunteers for Groff was not a hardship. [Def. Ex. F, at 83:11-15, 124:10-18]. Under the sham-affidavit doctrine, the Hess Declaration makes no attempt to explain away his contrary deposition testimony and, therefore, may not be considered on that point. *Daubert v. NRA Group, LLC*, 861 F.3d 382, 391 (3d Cir. 2017).

49. Agree.

50. Agree in part and disagree in part. From the deposition testimony as cited by Defendant, Diane Evans testified that it sometimes took 15 to 16 hours to deliver Amazon packages on Sunday, but she did not say that such resulted from a shortage of carriers. [Pl. Ex. F at 16:3-7]. Reference should be made to No. 50 of the Joint-Stipulation of Undisputed facts, ECF

No. 37-3, where Diane Evans identified delay factors that had no relationship to Groff. Agree to the balance.

51. Disagree, and object to materiality and admissibility. The cited record constitutes inadmissible hearsay and cannot be considered. Fed. R. Civ. P. 56(c)(2); Fed. R. Evid. 802; *Jacklyn v. Schering-Plough Healthcare Prods.*, 176 F.3d 921, 927 (6th Cir. 1999). There is a lack of personal knowledge, where Lancaster City Postmaster Douglas French could not recall the name of a single employee who complained about Groff. [Def. Ex. J. 23:16-18]. Furthermore, Defendant's Exhibit K was produced on February 14, 2020—the day Defendant filed for summary judgment, in violation of the Court's scheduling order imposing a discovery deadline. Plaintiff further objects on grounds of materiality. Employee morale is not a permissible ground for undue hardship as a result of *EEOC v. Abercrombie & Fitch Stores, Inc.*, ___ U.S. ___, 135 S. Ct. 2028, 2034 (2015). "Title VII does not demand mere neutrality with regard to religious practices," but the same are entitled to "favored treatment." *Id.* at 2034. Where the law, itself, gives favored treatment, then other employees cannot complain that Groff received favored treatment. Here, Hess testified that other employees at Holtwood "looked at it as [Groff] was being favored." [Pl. Mot. App. 80 (Hess Dep. 107:7-15)].

52. Factually agree, but disagree as to materiality. Any such results were caused by Defendant's failure to accommodate Groff and, therefore, are of no consequence to this case because not a valid ground for undue hardship.

53. Factually disagree, and further disagree as to materiality and admissibility. The Civil Rule 30(b)(6) corporate represented admitted that it was not a hardship to skip over Groff during the non-peak season on

the rotating Sunday schedule. [Pl. Br. at 9, ECF No. 37-1]. Hess lacks personal knowledge, and does not identify a single employee who worked more than otherwise on account of Groff, because Hess was not responsible for Sunday assignments at the Lancaster County Annex during the non-peak season. [J.S. Fact No. 49]. Moreover, where Hess did acquire knowledge, from his conversations with Supervisor Kelly Miller [Pl. Mot. App. 85 (Hess Dep. 192:8-24), ECF 37-4], he admitted by e-mail on July 31, 2018 that skipping over Groff was not an undue hardship and effectively accommodated Groff without any need for discipline. [Pl. Mot. App. 144, ECF 37-4]. The testimony of Hess, as cited by Defendant, is not admissible and may not be considered. Fed. R. Civ. P. 56(c)(2); Fed. R. Evid. 602.

54. Factually disagree, and further disagree as to materiality and admissibility. The Civil Rule 30(b)(6) corporate representative for USPS, District Manager Deborah Gless, admitted that it was not a hardship to skip over Groff during the rotating Sunday schedule. [Pl. Br. at 9, ECF 37-1]. Where Defendant admits to the Court, in Fact No. 17, that “RCAs are neither guaranteed specific hours or set schedules” and “are scheduled on an as-needed basis,” then Defendant confesses to the Court that accommodating Groff did not cause other non-career employees to improperly work more Sundays. Finally, Defendant cites the testimony of Brian Hess, who was not a manager at the Lancaster County Annex and therefore lacks personal knowledge if accommodating Groff caused other non-career employees to work more Sundays than they would have otherwise. Hess did not identify, by name, a single employee who worked more Sundays during the non-peak season on account of Groff.

55. Factually disagree, and further disagree as to admissibility. This is materially prejudicial to Plaintiff and should be disallowed, for the grounds stated in Plaintiff's Motion for Sanctions [ECF No. 38]. Furthermore, the parties stipulated, based on the testimony of Supervisor Diane Evans from the Lancaster County Annex, that all non-career employees were paid overtime wages as a matter of course for Amazon deliveries. [J.S. Fact No. 46, ECF No. 37-3]. Defendant relies on Brian Hess' testimony for the question of overtime costs, but that is not competent evidence: "I'm sure, *inevitably*, the other RCAs that were working went into overtime. *I would have to check time keeping. I don't have that documentation.*" [Def. Ex. F at 95:2-10 (emphasis added)]. He further qualified, "I wouldn't know about the Lancaster side," i.e., the non-peak season at the Lancaster County Annex. [*Id.*]. Hess' speculation is not competent evidence and may not be considered. Fed. R. Civ. P. 56(c)(2); Fed. R. Evid. 602.

56. Factually disagree. Hess explained that so-called "crossing-craft" on his part could have violated the CBA, "but if there's no RCAs in the office to file the grievance" then there was no violation of the CBA "because there [were] no RCAs a lot of times in my office to grieve that." [Def. Ex. F at 117:20-25 to 118:1-13]. The CBA provides a detailed framework for locating non-career employees. However, the CBA recognizes, "In emergencies, when the services of a substitute, rural carrier associate, or rural carrier relief employee are not available, another qualified employee may be designated by the Employer." [Pl. Ex. D, at USPS1041]. Hess had discretion, as Postmaster, whether to curtail delivery of Amazon packages, because Holtwood was a "non-promised" site, i.e., Amazon customers were not promised Sunday deliveries. [Pl. Mot. App. 80 (Hess

Dep. 109:1 to 110:1-5)]. On the day when RCA Valarie's car broke-down, Hess decided to deliver packages himself because "if I didn't deliver, Mondays would have been unmanageable and it would have delayed mail for customers. And it would have had an effect on their delivery times and possibly not meeting the mail truck." [Def. Ex. F at 95:20-24]. Hess explained, "that's my job" and "I didn't have a problem with it." [*Id.* at 95:1 to 96:1-7]. A grievant would have to show that Hess worked under circumstances that were *not* emergent and that the grievant was ready, willing, and able to do the work. Defendant has not shown that. Moreover, because the decision whether to curtail Amazon delivery or to work himself was within the discretion of Brian Hess, then Defendant cannot even argue that Groff was a cause of any alleged CBA violation. Additionally, the corporate representative approximated a shortage of 459 RCAs out of 1,500 routes across the Central Pennsylvania District [Pl. Mot. App. 111 (Corp. Rep. Dep. 51:16-25 to 52:1-6); Pl. Mot. App. 116 (Corp. Rep. Dep. 71:21-25 to 72:1-5)].

57. Reference should be made to No. 23 of the Joint-Stipulation of Undisputed Facts, ECF No. 37-3.

58. Reference should be made to No. 24 of the Joint-Stipulation of Undisputed Facts, ECF No. 37-3.

59. Agree.

60. Factually agree in part and disagree in part, and disagree on materiality and objection on the ground of hearsay. Materiality is not shown unless offered by Defendant to prove that it purposefully chose ineffective means to accommodate Groff, where Defendant could have accommodated him effectively without any undue hardship and without having to

constantly solicit volunteers. Justin Tekely was not deposed, and his alleged statements to Brian Hess are inadmissible hearsay and cannot be considered. Fed. R. Civ. P. 56(c)(2); Fed. R. Evid. 802. Furthermore, the record shows that it was Defendant's regular course of business to permit RCAs to attend Sunday-morning church services before reporting to work. [Pl. Ex. F at 19:1-7]. Consequently, the record does not show that Groff's Sabbatarian practice caused Tekely to miss Sunday church services and the record, further, does not show that Tekely had requested a Title VII accommodation. That "Postmaster Hess even delivered packages so the plaintiff wouldn't have to work on Sunday" is a distortion of the record. Brian Hess identified three Sundays where he delivered Amazon packages because one of the other RCAs (not Groff) had called-out for an unexpected emergency. [Def. Ex. F at 34:13-15; 95:5-24; 117:16-25 to 118:1]. Groff heard Hess' deposition testimony and agreed that there was only "one day" where Hess delivered Sunday Amazon packages in lieu of asking Groff to do it, but that raises the question where Groff should have been accommodated. [Def. Ex. B at 266:25 to 267:1-3]. There was an RCA from Paradise who covered for at least one of Groff's Sunday shifts, but Groff did not recall her name, whether it was Lori Lewis. [*Id.* at 267:18-24]. Plaintiff agrees to the balance.

61. Disagree. Justin Tekely was not deposed, and his alleged statements to Brian Hess are inadmissible hearsay and cannot be considered. Fed. R. Civ. P. 56(c)(2); Fed. R. Evid. 802.

62. Agree in part and disagree in part, and disagree on materiality. Materiality is not shown, because the record shows that Holtwood was a "non-promised site," meaning that Amazon customers were not prom-

ised Sunday delivery; therefore, Postmaster Brian Hess had discretion whether to curtail Sunday Amazon delivery. [Pl. Mot. App. 80 (Hess Dep. 109:1 to 110:1-5)]. Defendant has not shown the exact date that Sheila Moyer became injured in December of 2017. [Def. Ex. E, Hess Decl. ¶ 8]. Agree to the balance.

63. Factually disagree, and disagree on materiality for the same response to No. 61. The peak season is the Sunday before Thanksgiving until the first or second week of the new year. [J.S. Fact No. 42]. Moyer became injured in December of 2017. [Def. Ex. E, Hess Decl. ¶ 8]. Therefore, Moyer was not injured for the entirety of the 2017 peak season.

64. Disagree. Groff “assumed” he would be disciplined if he was scheduled on Sunday and didn’t work. [Def. Ex. B at 205:8-11].

65. Agree in part and disagree in part, and object to lack of personal knowledge. Whether RCAs were disciplined equally, regardless of the reason for their absence, rests on the testimony of Lyle Gaines. [Pl. Mot. App. 63-64]. Hess does not have personal knowledge of how RCAs outside of Holtwood were disciplined, and his testimony cannot be stretched that broadly. Fed. R. Civ. P. 56(c)(2); Fed. R. Evid. 602. Moreover, Plaintiff relies on his testimony that Hess acted with a discriminatory animus for the reasons stated in Plaintiff’s Brief in Opposition to Defendant’s Motion for Summary Judgment.

66. Agree in part and disagree in part, and disagree on materiality. Materiality is not shown because the law of constructive discharge (1) requires “a reasonable person in the employee’s shoes would resign” and (2) “no finding of a specific intent on the part of the employer to bring about the discharge is required for

the application of the constructive discharge doctrine.” *Goss v. Exxon Office Sys.*, 747 F.2d 885, 888 (3d Cir. 1984). The record further shows that Groff’s was the only Sunday Sabbatarian request for religious accommodation in the Central Pennsylvania District for 2017, 2018, and 2019. The record further shows that, prior to rolling out the Amazon contract, RCAs did not work on Sundays. [Pl. Br. at 2, 5, ECF 37-1]. As a result, the record shows that disciplining Groff on account of his Sunday Sabbatarian observance was unprecedented. Furthermore, the record does not show any employee disciplined for failing to report to work on Sunday, and the question put by counsel on Page 277 of Groff’s deposition is not evidence. [Def. Ex. B at 277]. Agree that Groff had no knowledge of any other employee being disciplined for failing to report to work on Sunday.

67. Disagree. This is a distortion of Groff’s testimony where, as cited, he was referring to management *other than Brian Hess*. Groff answered a general question about statements by “anybody in management.” [Def. Ex. B, at 287:3-6]. Defense counsel did not clarify that, by “management,” she was including Brian Hess, and Groff’s testimony consistently drew a distinction between Hess and postal management: “I had no interaction whatsoever with Lancaster management. Everything was being done by Brian [Hess]” [Pl. Ex. C at 186:9-10], and “Brian [Hess] approached me” and “he told me that through conversations he had with post office management that they were, what I perceived, that they were considering making an example of me,” [*id.* at 231:11-19]. The questions put by defense counsel also drew a distinction between Hess and management: “Did Mr. Hess let you know that he had spoken with management and you were not excused from failing to work on Sundays when you were

scheduled?” [*Id.* at 205:23-25]. Hess was a representative of “the postal management to me,” but was not management itself. [Pl. Br. at 11, ECF 37-1].

68. Reference should be made to No. 25 from the Joint-Stipulation of Undisputed Facts, ECF No. 37-3, which makes clear that termination follows the 14-day paper suspension, improperly omitted here by Defendant.

69. Factually agree in part and disagree in part, and disagree on materiality. Hess’ subjective, uncommunicated “pattern” of picking three non-consecutive Sundays for discipline is not material because the law of constructive discharge (1) requires “a reasonable person in the employee’s shoes would resign” and (2) “no finding of a specific intent on the part of the employer to bring about the discharge is required for the application of the constructive discharge doctrine.” *Goss v. Exxon Office Sys.*, 747 F.2d 885, 888 (3d Cir. 1984). Lyle Gaines testified that a single absence is not protected from corrective action. [Pl. Br. 11, ECF 37-1]. The CBA defines a single “failure to perform work as requested” as “just cause” for discipline. [Pl. Ex. D at USPS1011]. As cited by Defendant, Hess only stated that it was his subjective, uncommunicated “pattern” of picking three *non-consecutive* Sundays, where Groff did not work, before requesting discipline on Groff. [Def. Ex. F at 155:3-16]. That shows the correctness of Groff’s testimony, “I had no way of knowing how many Sundays were being included before I got another discipline.” [Pl. Br. 10, ECF 37-1]. Agree to the balance.

70. Reference should be made to No. 26 from the Joint-Stipulation of Undisputed Facts, ECF No. 37-3.

71. Same response as No. 68. The Joint-Stipulation of Undisputed Facts covers the sequence of the

progressive discipline and the Sunday dates for which Groff was disciplined, and defense counsel may not improperly suggest any contrary facts. Moreover, materiality is otherwise not shown where termination was the last step to be imposed on Groff and he had accumulated additional Sunday absences since the PDI before the 14-Day Paper Suspension. [J.S. Fact Nos. 25, 28, 36, 39]. Furthermore, based on Pages 9 through 11 of the Brief in Support of Plaintiff's MSJ, Plaintiff objects where defense counsel is distorting the record by counting non-peak Sundays where Groff was accommodated at the Lancaster County Annex, without undue hardship, by being skipped on the rotating Sunday schedule and where, as Brian Hess wrote, "This satisfies his religious accommodation request for Sundays and no disciplinary action is needed." [Pl. Br. 10-11, ECF 37-1]. Because Groff was accommodated, such that no disciplinary action was needed, defense counsel may not improperly mislead the tribunal by counting those Sundays towards Groff's discipline.

72. Same response and objections as No. 68 and 70. Defense counsel is distorting the record and improperly factoring Sundays that were part of Groff's accommodation.

73. Same response and objections as No. 68 and 70. Defense counsel is distorting the record and improperly factoring Sundays that were part of Groff's accommodation.

74. Same response and objections as No. 68 and 70. Defense counsel is distorting the record and improperly factoring Sundays that were part of Groff's accommodation.

75. Same response and objections as No. 68 and 70. Defense counsel is distorting the record and improperly factoring Sundays that were part of Groff's accommodation.

76. Same response and objections as No. 68 and 70. Defense counsel is distorting the record and improperly factoring Sundays that were part of Groff's accommodation. Defense counsel improperly suggests the opposite of No. 36 from the Joint-Stipulation of Undisputed Facts, ECF 37-3. Groff was issued a 14-Day Paper Suspension for the Sundays of June 17, 2018, August 12, 2018, and August 26, 2018, *not* due to having accumulated 24 total absences. [Id.].

77. Reference should be made to No. 38 from the Joint-Stipulation of Undisputed Facts, ECF No. 37-3. Groff tendered his resignation at the end of his shift on January 18, 2019, effective January 19, 2019. [Def. Ex. H at P23]. Defendant processed the resignation on January 18th. [Def. Ex. D, USPS00003].

78. Agree.

79. Agree in part and disagree in part. Agree as stated; disagree as to any suggestion that Hess' comparison of Groff to sexual perverts was similar in-kind to the good taste joking that the Holtwood Post Office otherwise enjoyed.

80. Agree in part and disagree in materiality in part. That there was no discussion on religion is not material.

81. Agree in part and disagree in part. The postmaster had discretion to curtail delivery in snow storms, and allowed other RCAs, but not Groff, to curtail delivery in those circumstances. [Pl. Ex. C at 288:15-25 to 289:1-12]. Agree to the balance, as stated.

82. Agree in part and disagree on materiality in part. That there was no discussion on religion is not material.

83. Agree in part and disagree in part. Groff testified that Hess “never offered” to help Groff with his parcels. [Def. Ex. B at 335:3-17]. Agree to the balance, as stated.

84. Agree in part and disagree in part. Groff testified that he finished the work sooner than the others because “I buckled down and worked really hard,” even though “I had the longest route.” [Def. Ex. B at 350:9-20]. Agree to the balance, as stated.

85. Agree.

86. Agree, but qualified that Groff was not referring to Brian Hess as “anybody in management.” [Pl. Ex. C at 287:3-6]. Defense counsel did not clarify that, by “management,” she was including Brian Hess, and Groff’s testimony consistently drew a distinction between Hess and postal management: “I had no interaction whatsoever with Lancaster management. Everything was being done by Brian [Hess]” [*id.* at 186:9-10], and “Brian [Hess] approached me” and “he told me that through conversations he had with post office management that they were, what I perceived, that they were considering making an example of me,” [*id.* at 231:11-19]. The questions put by defense counsel also drew a distinction between Hess and management: “Did Mr. Hess let you know that he had spoken with management and you were not excused from failing to work on Sundays when you were scheduled?” [*Id.* at 205:23-25]. Hess was a representative of “the postal management to me,” but was not management itself. [Pl. Br. at 11, ECF No. 37-1].

87. Factually agree, but disagree on materiality where that was established through Roger Sheddy's testimony.

88. Agree, but disagree on materiality. Defendant cannot predicate "undue hardship" under Title VII based on ordinary business risks and generic occupational hazards.

89. Agree that she denies it, but disagree with the denial, based on her testimony and the business records produced by Defendant, showing that she requested discipline against Groff despite being informed of his request for religious accommodation. That includes the Letter of Warning.

90. Agree that he denies it, but disagree with the denial, based on Roger Sheddy's testimony, where Douglas French participated in the March 2017 teleconference with Mary Tyneway. [Pl. Ex. A at 17:9-25 to 19:1-14].

91. Agree that he denies it, but disagree with the denial, where Lyle Gaines instructed managers to revoke Groff's accommodation. [Pl. Br. at 9-10, ECF 37-1].

92. Agree that he denies it, but disagree with the denial, based on Roger Sheddy's testimony, where Hess participated in the March 2017 teleconference with Mary Tyneway [Pl. Ex. A at 17:9-25 to 19:1-14] and based on Groff's testimony concerning Hess' hostility. [Pl. Ex. Ct at 239:25 to 243:1-12; 270:13-25 to 291:1-10].

93. Agree as stated, but that is not the same church or denomination as Plaintiff, and Plaintiff further disagrees on materiality. "Intrafaith differences of that kind are not uncommon among followers of a

particular creed, and the judicial process is singularly ill equipped to resolve such differences,” and where “the guarantee of free exercise is not limited to beliefs which are shared by all of the members of a religious sect.” *Thomas v. Review Bd.*, 450 U.S. 707, 715-16 (1981).

94. Same response as No. 92.

95. Same response as No. 92.

96. Disagree. Defendant cites USPS00064, which describes additional incidents beyond what Defendant chose to list. Groff also reported for instance, “I was informed verbally by my immediate supervisor (Brian Hess, Holtwood Post Office) that he was told that the management at the Lancaster County Annex was so serious about this mandatory attendance on Amazon Sundays that they intended to skip the typical early steps of disciplinary action and go directly to a suspension and subsequent termination of my job. I considered this to be a direct threat to my work position, union protections, and rights as protected under Federal law.” [Def. Ex. D at USPS00064].

97. Agree as stated, disagree with the merits of its findings and conclusions.

98. Disagree. Groff also alleged that his Seven-Day Paper Suspension was signed by Keith Krempa, the Postal Office Operations Manager. [Pl. Ex. D at USPS310].

99. Disagree. USPS364 to 415 relate to affidavits that Groff submitted in support of his grievances in what was a continuing violation by Defendant.

100. Objection. Out of 42 pages, Defendant does not cite any specific page that it is referring to. This is unduly burdensome and materially prejudicial to

Plaintiff. Plaintiff further objects as immaterial to the extent this subject has been addressed by deposition testimony.

101. Objection. Out of 21 pages, Defendant does not cite any specific page that it is referring to. This is unduly burdensome and materially prejudicial to Plaintiff. Plaintiff further objects as immaterial to the extent this subject has been addressed by deposition testimony.

102. Disagree. As cited by Defendant, USPS496 does not identify any employee by name. USPS480 to 483 contain timesheets but not volume. Furthermore, it's unclear whether these timesheets correspond to the date that Groff was describing in his deposition.

103. Same response as No. 101.

104. Object as immaterial, where this is cumulative of No. 77.

105. Object as immaterial, where this is cumulative of No. 78.

106. Agree that the agency's decision was made as stated; disagree with the merits of its findings and conclusions.

107. Disagree. Groff also cited that the hostile work environment was "from USPS management," as a part of a continuing violation. [Def. Ex. D at USPS566].

108. Factually agree, but disagree with materiality. Undue hardship is not Groff's burden of proof, and he can rely on the strength of other witnesses, including the Civil Rule 30(b)(6) corporate representative who testified that there is no evidence of any negative impact on Defendant's operations due to Groff's Sabbatarian practice.

WHEREFORE, the Court should deny Defendant's Motion for Summary Judgment.

Dated: March 6, 2020

Respectfully submitted,

CHURCH STATE COUNCIL

By: /s/ Alan J. Reinach

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