No. 21-1900

## IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Gerald E. Groff, Plaintiff-Appellant, v.

Louis DeJoy, Postmaster General, United States Postal Service, Defendant-Appellee.

On Appeal from the United States District Court for the Eastern District of Pennsylvania
No. 5:19-cv-01879-JLS
Honorable Jeffrey L. Schmehl

## JOINT APPENDIX - VOLUME I OF III <br> PP. 1-31

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## UNITED STATES DISTRICT COURT EASTERN DISTRICT OF PENNSYLVANIA

GERALD E. GROFF,
Plaintiff,
vs.
LOUIS DEJOY, Postmaster General, United States Postal Service,

Defendant.

Case No. 19-1879-JLS

The Honorable Jeffrey L. Schmehl

NOTICE OF APPEAL

## NOTICE OF APPEAL

Notice is hereby given that Plaintiff in the above named case hereby appeals to the United States Court of Appeals for the Third Circuit from the April 6, 2021 Order denying Plaintiff's Motion for Partial Summary Judgment and Plaintiff's Motion for Sanctions.

Respectfully submitted this 5th Day of May, 2021.

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## CERTIFICATE OF SERVICE

The undersigned hereby certifies that on Wednesday, May 5, 2021, the foregoing was filed electronically and served on the other parties via the court's ECF system.

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GERALD E. GROFF,

> Plaintiff,
v.

LOUIS DEJOY, Postmaster General, United States Postal Service,

Defendant.

CIVIL ACTION
No. 19-1879

## ORDER

AND NOW, this $6^{\text {th }}$ day of April, 2021, upon review of all pending motions in this matter, as well as all responses and replies, and after oral argument being held, it is hereby ORDERED as follows:

1. Defendant's Motion for Summary Judgment as to Counts I and II of the Amended Complaint (Docket No. 36) is GRANTED;
2. Plaintiff's Motion for Partial Summary Judgment as to Count II of the Amended Complaint (Docket No. 37) is DENIED;
3. Plaintiff's Motion for Sanctions (Docket No. 38) is DENIED;
4. Judgment shall be ENTERED in favor of Defendant; and
5. The Clerk of Court shall CLOSE this case.

BY THE COURT:
/s/ Jeffrey L. Schmehl
Jeffrey L. Schmehl, J.

## IN THE UNITED STATES DISTRICT COURT

 FOR THE EASTERN DISTRICT OF PENNSYLVANIAGERALD E. GROFF,

> Plaintiff,
v.

LOUIS DEJOY, Postmaster General, United States Postal Service,

Defendant.
CIVIL ACTION
NO. 19-1879

## MEMORANDUM OPINION

Schmehl, J. /s/ JLS
April 6, 2021

## I. INTRODUCTION

Plaintiff, Gerald Groff ("Groff" or "Plaintiff") brings this suit against his former employer, Louis DeJoy, Postmaster General, United States Postal Service ("Defendant"). Groff's Complaint contains a cause of action for religious discrimination under two different theories: disparate treatment and failure to accommodate. Before the Court is the Motion for Summary Judgment of Defendant, the Motion for Partial Summary Judgment of Groff, the parties Joint Statement of Material Facts, and Plaintiff's Motion for Sanctions. All motions have been responded to and oral argument has been held. For the reasons discussed more fully below, Defendant's Motion for Summary Judgment will be granted, and Groff's Motion for Partial Summary Judgment will be denied.

## II. LEGAL STANDARD

Summary judgment is appropriate if there is no genuine dispute as to any material fact and the moving party is entitled to a judgment as a matter of law. Fed. R. Civ. Proc. 56(c). "A motion for summary judgment will not be defeated by 'the mere existence' of
some disputed facts but will be denied when there is a genuine issue of material fact." Am. Eagle Outfitters v. Lyle \& Scott Ltd., 584 F.3d 575, 581 (3d Cir. 2009) (quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-248 (1986)). A fact is "material" if proof of its existence or non-existence might affect the outcome of the litigation, and a dispute is "genuine" if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." Anderson, 477 U.S. at 248.

In undertaking this analysis, the court views the facts in the light most favorable to the non-moving party. "After making all reasonable inferences in the nonmoving party's favor, there is a genuine issue of material fact if a reasonable jury could find for the nonmoving party." Pignataro v. Port Auth. of N.Y. and N.J., 593 F.3d 265, 268 (3d Cir. 2010) (citing Reliance Ins. Co. v. Moessner, 121 F.3d 895, 900 (3d Cir. 1997)). While the moving party bears the initial burden of showing the absence of a genuine issue of material fact, meeting this obligation shifts the burden to the non-moving party who must "set forth specific facts showing that there is a genuine issue for trial." Anderson, 477 U.S. at 250.

## III. FACTUAL BACKGROUND

Groff identifies as an Evangelical Christian within the Protestant tradition. (Joint Statement of Facts, © 1.) On April 7, 2012, he was hired as a Temporary Relief Carrier at the Quarryville Post Office for the USPS. (Id. at व 2.) He transferred to the Paradise Post Office as a Rural Carrier Associate on July 14, 2012. (Id. at ๆ 4.) As an RCA, Groff was classified as a "non-career" employee, responsible to cover for the work of any Rural Route Carrier (a "career" employee) in the delivery of mail and packages. (Id. at © 5.) Part of being an RCA is being flexible. (Id.) Most career employees who are mail carriers
began their USPS employment as a noncareer employee. An RCA is one such non-career position. This is generally an entry-level position. (JSOF at ๆ 6.) 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. RCAs are neither guaranteed specific hours or set schedules and are scheduled on an as-needed basis. (See Hess Decl. at 9 , ${ }^{2}$, ECF No. 36, Ex. E.)

Groff was part of the Central Pennsylvania District of USPS, which includes Lancaster County. (Id. at ब 7.) In an effort to remain profitable, in 2013, the USPS signed a contract with Amazon pursuant to which the USPS would deliver Amazon packages. (Groff Dep. at 159,166 ). It was critically important to the USPS that Sunday Amazon delivery be successful. (Hess Decl. ब4.)

On May 24, 2016, USPS and the National Rural Letter Carriers Association ("Union") entered a Memorandum of Understanding ("MOU") about how the USPS would deliver for Amazon. (Id. at $\mathbb{\|} 8$.) The MOU sets forth a detailed procedure for Sunday Amazon deliveries. First, the union creates a list of all part-time flexible rural carriers, substitute carriers, RCAs, and rural carrier relief employees. Then, every employee is asked if he or she wants to work on Sundays and holidays. Then two lists are created: one of employees who want to volunteer to work on Sundays and holidays; and one of employees who do not. (Id. at $\mathbb{\top} 9$ 9.) On any given Sunday or holiday, management determines how many carriers are necessary given the expected mail volume. (Id. at $\mathbb{\|}$ 10.) Under the MOU, management then assigns carriers as follows: First management
schedules assistant rural carriers ("ARCs"). If there are sufficient ARCs, no additional part-time flexible carriers are scheduled. 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 parttime flexible carriers are scheduled. 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. (JSOF at $\mathbb{9}$ 10.) Pursuant to the MOU, a part-time flexible carrier may be bypassed in the rotation if the part-time flexible carrier has approved leave or a non-scheduled day adjacent to the Sunday or holiday or 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. (Id. at © 11.)

For RCAs, seniority is based on time in service in a particular office, not based on time working for USPS as an organization. (Id. at © 12.) In 2015, prior to the enactment of the MOU, exempting an RCA from Sunday delivery was within the discretion of the postmaster. (Hess Decl. ब7.) The relatively large Quarryville station had other carriers available to deliver on Sundays. (Id. at ©5.) The Quarryville station began delivering Amazon packages on Sundays in 2015, (Groff Dep. at 161, 169, ECF No. 36, Ex. B,) and Groff negotiated with his then-postmaster, Patricia Wright, to be exempt from working on Sundays. (Id. at 108.) In 2016, Postmaster Wright informed Groff that she would no longer be able to exempt him from Sunday work. (Groff Response to Interrogatory No. 5, ECF No. 36, Ex. C.)

After learning he would no longer be exempted from Sunday work in Quarryville, Groff requested reassignment to the Holtwood station, which was not yet delivering Amazon packages on Sundays. (Groff Dep. at 161.) At all relevant times that Groff was working at Holtwood, Brian Hess was Groff’s Postmaster. (JSOF at ¢ 13.) When Hess hired Groff, he knew Groff transferred to avoid Sunday Amazon deliveries due to Groff’s religious beliefs. (Id. at $\mathbb{\|} 14$.) No one ever promised Groff that the station would continue to be so exempt or that he specifically would be exempt from delivering on Sundays. (Id. at © 15.)

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 and was never disciplined. (Id. at ๆ 17.) Beginning in March of 2017, the Holtwood Post Office was required to participate in Amazon package deliveries, which meant Groff could be scheduled to work on Sundays. (Id. at ब 18.) The first Amazon schedule involving Holtwood carriers was for Sunday, March 19, 2017, and Groff was scheduled for that Sunday. (Id. at 『 16.)

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, although he did make Amazon deliveries on holidays that were not a Sunday. (JSOF at $\mathbb{\|}$ 21.) Management suggested all the following accommodations to Groff: If he was scheduled on a Sunday, he could take another day that week entirely off from work as a day of worship or he could come in later on a Sunday, after church. Management also suggested that it would contact other stations to attempt to find coverage for Groff when he was scheduled on a Sunday, and if coverage was found, Groff would be excused. (Id.
at 【 22.) Groff was also permitted to find his own coverage for Sundays that he was assigned to work. (Hess Dep. at 122, 126, ECF No. 36, Ex. F.)

Groff was scheduled but did not report to work on the following days: 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. (JSOF at © 23.) This is at least 24 scheduled Sundays where Groff was scheduled and did not report to work. (Id.) When the plaintiff was scheduled on a Sunday and did not work, it upset the other carriers. (Evans Dep. at 42, ECF No. 36, Ex. I; Hess Dep. at 41.) There were complaints. (French Dep. at 23) and discussion of a boycott. (Hess Dep. at 41-42.) One carrier transferred from Holtwood because he felt it was not fair that the plaintiff was not reporting on scheduled Sundays. (Hess Dep. at 102.) Another carrier resigned in part because of the situation. (Hess Dep. 103.) When the plaintiff was scheduled and did not work, it complicated the scheduling and planning processes and created more difficulties in timely delivering the packages. (Evans Dep. at 42-43; French Dep. at 31; Hess Dep. at 82.) Skipping Groff in the rotation meant other carriers had to work more Sundays than they otherwise would have had to. (Hess Dep. at 49, 82.)

Groff claims that Postmaster Hess treated other carriers better than him and required him to deliver the mail even when there was bad weather. Groff 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, and another
time Hess ordered Groff to assist other carriers who needed help. (Groff Dep. at 289290.) However, the record shows that Plaintiff was the most experienced RCA in the station, one of the other RCAs was still relatively new, and the timecards show that Groff had the fewest pieces of mail to deliver and finished his work the earliest. (Groff Dep. at 349-350.)

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. at 239.) The paper had photos of people who had been arrested for sexual deviance in a local park. (Id. at 240.) Groff did not contemporaneously report this comment to anyone in management, nor did he tell Hess that he didn't appreciate the comment. (Id. at 240-243.) Employees in Holtwood sometimes made jokes and teased each other. (Id. at 243-244.) More than once there was joking in the station about an employee's photo. (Groff Dep. 243-244.)

During the non-peak season of 2018, Postmaster Hess sometimes found coverage so that Groff did not have to work. (JSOF at $\mathbb{9}$ 24.) Hess looked for substitutes for Groff each week, including from other post offices. (Hess Dep. at 122-123.) Hess notified Groff that USPS can progressively impose discipline on him for refusing to work Sunday, beginning with a letter of warning, to a 7 -day suspension, to a 14-day suspension, and then termination. (JSOF at ब 25.) However, paper suspensions do not cause an employee to lose work or pay, (Id. at $\mathbb{4} 26)$ as within the USPS, discipline is intended to be "corrective" in nature, not punitive. (Id. at ब 27.)

Solely by virtue of Groff not reporting for work on Sundays, USPS held eight (8) Performance Discipline Interviews ("PDIs") with Groff and imposed progressive
discipline as follows: 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. (Id. at 『 28.) For Groff, the discipline imposed on him was intended to correct his "[n]ot reporting to work as scheduled" on Sundays. (Id.) Aside from attendance, Groff otherwise had an excellent performance as an RCA, being a good and efficient employee. (Id. at ब 29.)

On April 5, 2017, Groff was summoned for a PDI with Station Master Aaron Zehring for failing to report to work on Sunday. (Id. at $\mathbb{1}$ 30.) Zehring suggested Groff pick a different day of the week for observance of the Sabbath. (Id. at $\mathbb{9}$ 32.) As a result of the July 11, 2017, Letter of Warning, Groff contacted an Equal Employment Opportunity counselor at USPS regarding his allegation that the USPS failed to give him a religious accommodation from Sunday deliveries. (Id. at ब 32.)

USPS next issued Groff a 7-Day Paper Suspension for not working Sunday, December 3, 2017, or December 17, 2017. (JSOF at © 33.) As a result of this 7-Day Paper Suspension, on February 3, 2018, Groff again contacted an Equal Employment Opportunity counselor at USPS. (Id. at ब 1 34.)

Brian Hess held a PDI with Groff on September 6, 2018, due to Groff not reporting for work on Sundays, and 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. (Id. at $\mathbb{1 q \|}$ 35-36.) As a result of this 14-Day Paper Suspension, Groff again complained through the EEO process, (id. at $\mathbb{\|} 37$ ) then resigned his employment on January 18, 2019. (Id. at © 38.) Groff also had additional Sunday absences in the time
period following the September 6, 2018, PDI and receiving the 14-Day Paper Suspension on October 5, 2018. (JSOF at 【 39.)

When 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. (Id. at ब 42.) 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. (Id. at ब 43.) During the peak season, all Amazon deliveries were handled in each respective post office, using its own staff and without the Lancaster County Annex. (Id. at 『 44 .)

RCAs have no contractual right to specific days off, (JSOF at © 45) but receive overtime pay for working Sundays and holidays. (Id. at ब 46.) During non-peak season, RCAs were permitted to volunteer to always be scheduled for Sunday delivery. (Id. at $\mathbb{\square}$ 47.) Otherwise, Sunday delivery was assigned during nonpeak season using a rotating schedule for all RCAs, without regard to seniority. (Id.) No RCA had more or less of a right to have Sunday off than another RCA. (Id. at © 48.) It would have been futile for Groff to have transferred to any other post office as an RCA because all RCAs must be available to deliver for Amazon deliveries on Sundays. (Id. at © 40.)

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. (Id. at ब 49.) 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. (JSOF at 9 49.) During the non-peak season, RCAs were drawn from the entirety of 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. (Id. at © 50.)

During the "peak" season, Hess typically located another RCA who volunteered to cover Groff’s Sunday shifts. (Id. at © 51.) 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. (Id. at © 52.) When Groff was scheduled and did not work, it complicated the scheduling and planning processes. (Evans Dep. at 42-43; French Dep. at 31; Hess Dep. at 82.) Similarly, when Groff was scheduled and did not work, it created more difficulties in timely delivering the packages. (Evans Dep. at 43.) Skipping Groff in the rotation meant other carriers had to work more Sundays than they otherwise would have had to. (Hess Dep. at 49, 82.) The USPS had difficulty getting carriers to work on Sundays and many RCAs resigned. (Evans Dep. at 14; Hess Dep. at 75.)

Neither Postmaster Hess nor anyone else in management ever made negative comments to Groff relating to his religion. (Groff Dep. at 286-287.) Supervisor Evans, Postmaster French, Labor Relations Manager Gaines and Postmaster Hess all deny discriminating against, retaliating against, or treating Groff any differently because of his religion or his religious objection to working on Sundays. (Evans Dep. at 43-44; French Dep. at 47-48; Gaines Dep. at 87-88; Hess Dep. at 202-203.) Further, Postmaster Hess and Supervisor Evans are both Christian, and Postmaster French is Catholic. (ECF No. 36, Ex. D, USPS00132, 00153, 00211.)

## IV. DISCUSSION

Defendant argues that the claims contained in Plaintiff's Complaint for religious discrimination should be dismissed. For the reasons set forth below, Defendant's motion for summary judgment will be granted and Plaintiff's Complaint will be dismissed. Further, Plaintiff's motion for partial summary judgment as to his failure to accommodate claim will be denied.

Title VII makes it unlawful for an employer to "fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin." 42 U.S.C. § 2000e-2(a)(1). Under Title VII, employees may assert two different theories of religious discrimination: failure to accommodate and disparate treatment. E.E.O.C. v. Aldi, Inc., 2008 WL 859249, at *5 (W.D. Pa. Mar. 28, 2008); citing Abramson v. William Paterson College of New Jersey, 260 F.3d 265, 281 (3d Cir. 2001).

## A. DISPARATE TREATMENT

To survive a motion for summary judgment on disparate treatment, Plaintiff can show direct or indirect evidence of discrimination. The typical McDonnell Douglas burden shifting paradigm is inapplicable where there is direct evidence of discriminatory animus. Price Waterhouse v. Hopkins, 490 U.S. 228, 242 (1989). In the instant matter, Groff argues that there is direct evidence of discrimination, or in the alternative, that he has produced sufficient circumstantial evidence to survive summary judgment under the McDonnell Douglas test.

## 1. Direct Evidence

Direct evidence of discrimination takes the form of either: 1) a workplace policy that is discriminatory on its face; or 2) statements by decisionmakers that reflect the alleged animus and bear squarely on the alleged adverse employment decision. Garcia $v$. Newtown Twp., 483 F. App'x 697, 704 (3d Cir. 2012). Evidence is only direct when it is so strong that a factfinder would have little choice but to conclude that a discriminatory attitude was, more likely than not, a motivating factor. See Anderson v. Wachovia Mortg. Corp., 621 F.3d 261, 269 (3d Cir. 2010).

Groff does not argue that the USPS has a workplace policy that is discriminatory on its face. Rather, he focuses on the second form of direct evidence of discrimination, arguing that decisionmakers made statements that reflect alleged animus toward him.

Plaintiff's first alleged direct evidence of discrimination is Quarryville Postmaster Patricia Wright's 2015 alleged statement regarding Groff's refusal to work Sundays, "I'm not going to put up with this shit again this year." (Groff Dep., pp. 111-113; 325.) However, this statement is irrelevant to the instant allegations of discrimination, as it transpired before Groff was stationed at the Holtwood Post Office. Further, Wright is not a decisionmaker as to Groff's discipline.

Next, Plaintiff argues that in March of 2017, Christiana Postmaster Roger Sheddy was on a conference call with other postmasters and managers to discuss the Amazon contract in Lancaster County. (Sheddy Dep., ECF No. 43, Ex. A at 17.) He heard an individual who he believed was Brian Hess, Groff's postmaster, complain about someone not working Sundays due to religious observance, and assumed this statement was made in reference to Groff. (Id.) Sheddy stated that in response, another manager said, "oh
yeah, we're going to get him." (Id. at 17-19.) Sheddy then heard Mary Tyneway, the Post Office Operations Manager, state "Sunday's just another day." (Id. at 18.) Although it may sound nefarious, this allegation is too speculative to be the type of direct evidence that can serve as proof of discrimination. Sheddy heard someone that he thought was Hess complaining about someone that he assumed to be Groff not working on Sundays due to his religion. This allegation is rife with speculation and is insufficient to be the type of smoking gun evidence necessary to prove direct discrimination. Further, the statement of Mary Tyneway that "Sunday's just another day" makes no mention of religion, and Tyneway is also a non-decisionmaker as to Groff's discipline.

Quarryville Supervisor Sheddy felt that Groff was being treated unfairly and sent a letter reflecting these thoughts to a Post Office consultant in Washington D.C. However, Sheddy was not a decisionmaker regarding Groff's discipline and therefore, his thoughts clearly cannot be direct evidence of discrimination.

Groff also argues that Hess told him management was going to "make an example" out of him. (Groff Dep. at 231.) Hess denies that he ever made such a statement, but even if he did, it would be insufficient to serve as direct evidence of discrimination. It is clear from that record that USPS management did not in fact make an example of Groff. He was permitted 24 Sunday absences, three times the number that could have resulted in his termination and he was never fired. If management was looking to make an example of Groff, they could have done so after far fewer absences than 24. This alleged statement by Hess, even if true, is not the type of strong evidence that permits a plaintiff to avoid application of McDonnell Douglas by proving direct evidence of discrimination.

Groff also makes much of the fact that on two occasions, Postmaster Hess helped other carriers and not him, and that Hess once made a joke that hurt his feelings. First, the record shows that none of these instances had anything to do with Groff's religion. The record shows that the instances when Hess helped other RCAs and not Groff involved carriers who were new, had a large amount of mail and packages to deliver, and were overwhelmed. The record also shows that the joke Hess made that hurt Groff's feelings had nothing to do with religion and that the atmosphere at Holtwood involved lots of joking between employees, including Groff. Groff could only cite to a few minor instances in which Hess allegedly treated him poorly over two years of working at the Holtwood post office. These minor instances are insufficient to prove animus directed toward Groff on the part of Hess.

Groff makes other unavailing arguments that direct evidence of discrimination exists. Groff being "subjected" to eight (8) pre-disciplinary interviews for his failure to work on Sundays, his claim that accommodations were offered and then revoked and his claim that accommodations varied from region to region are all insufficient direct evidence of discrimination. None of these allegations, even if proven to be true, amount to enough evidence to allow a factfinder to conclude that a discriminatory attitude was, more likely than not, a motivating factor in Defendant's treatment of Groff. It is noteworthy that Groff has produced no direct evidence of animus whatsoever.

In summary, Groff has failed to produce any direct evidence that clearly shows that postal management was motivated by animus against Groff's religion. Therefore, he cannot avoid the application of the McDonnell Douglas burden shifting paradigm.

## 2. McDonnell Douglas Analysis

To establish a prima facie case of religious or national origin discrimination under a disparate treatment theory when there is no direct evidence of discrimination, courts use the burden-shifting framework of McDonnell Douglas Corp. v. Green, 411 U.S. 792, 803-05 (1973) ${ }^{1}$. First, the plaintiff has the burden of proving a prima facie case of discrimination by the preponderance of the evidence. Second, if the plaintiff succeeds in proving the prima facie case, the burden shifts to the defendant "to articulate some legitimate, nondiscriminatory reason for the employee's rejection." Id. at 802. Third, should the defendant carry this burden, the plaintiff must then have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant were not its true reasons, but were a pretext for discrimination. Id. at 804.

## a. Prima Facie Case

To establish a prima facie case, the plaintiff must show: 1) he is a member of a protected class; 2) he is qualified for the position; 3) he suffered an adverse employment action; and 4) that the action occurred under circumstances that give rise to an inference of unlawful discrimination, such as when a similarly-situated person not of the protected class is treated differently. Abramson, 250 F.3d at 281-82 (citing Goosby v. Johnson \& Johnson Med., Inc., 228 F.3d 313, 318-19 (3d Cir. 2000).

Defendant admits that Groff can establish that he is a member of a protected class and is qualified for the position as issue. (ECF No. 36, p. 15.) However, Defendant

[^0]argues that Groff cannot establish the third prong of the prima facie case - that he suffered an adverse employment action.

An action is adverse only if it tangibly affects the terms and conditions of employment. Burlington N. \& Santa Fe Ry Co. v. White, 548 U.S. 53, 64 (2006). In support of his claim that he suffered an adverse employment action, Groff claims that he was constructively discharged. Constructive discharge requires discriminatory actions "so intolerable that a reasonable person would be forced to resign." Goss v. Exxon Office Systems Co., 747 F.2d 885, 887 (3d Cir. 1984). Groff argues that he was forced to resign before Defendant fired him due to his repeated Sunday absences. Therefore, the question is whether a reasonable employee in Groff's shoes would have expected to be terminated. Groff was absent twenty-four times over a two-year period and received only a few disciplines. He lost no pay or hours because of his discipline and knew of no employee who had ever been fired for absenteeism.

However, Groff did testify that Brian Hess told him that management "intended to skip the typical early steps of disciplinary action and go directly to a suspension and subsequent termination" of his job (ECF No. 36, Ex. D, Notice of Right to File Individual Complaint), and that Supervisor Treva Morris told Groff in writing that she was considering discipline for his failure to work as scheduled and that the "corrective action may be up to and including a removal from the Postal Service." (ECF No. 37, Pl's Mtn Appendix, p. 140.) This creates a genuine issue of material fact as to whether a reasonable employee in Groff's shoes would have expected to be fired. Accordingly, I find that a genuine issue of fact exists as to whether Groff suffered an adverse employment action.

Defendant also argues Groff does not meet with fourth prong of the prima facie case because he cannot prove causation. A plaintiff must show some "causal nexus" between his protected status and an employment action. Sarullo v. U.S. Postal Serv., 352 F.3d 789, 797 (3d Cir. 2003). In order to establish a prima facie case, Groff needs to show that Defendant's adverse employment action was motivated by an anti-religion animus. Typically, this type of causation is proven through the identification of similarlysituated employees outside of a plaintiff's protected class who received preferential treatment. In this matter, Groff has produced no evidence of causation through such comparators. There are no similarly-situated employees identified, no employees who were not religious and who were permitted be absent on certain required work days. Groff has completely failed to identify any similarly situated employees who were treated more favorably than him.

However, a plaintiff can also meet the fourth prong by showing that the circumstances of the adverse action give rise to an inference of discrimination. Oakley $v$. Orthopaedic Assocs. of Allentown, Ltd., 742 F. Supp. 2d 601, 608 (E.D. Pa. 2010), citing Jones v. Sch. Dist. of Philadelphia, 198 F.3d 403, 411 (3d Cir. 1999); Parsia v. Allied Tube \& Conduit Corp., 2009 WL 750191, at *11-12 (E.D.Pa. Mar. 19, 2009). Therefore, Groff could establish the fourth prong by showing that the circumstances of his alleged constructive discharge give rise to the inference of discrimination. Upon review of the entire record in this matter, I find that there is a genuine issue of material fact as to whether Groff could show that the circumstances of his constructive discharge suggest discrimination on the part of Defendant. Accordingly, it is possible that Groff may meet the fourth prong and therefore, be able to prove a prima facie case of religious
discrimination at the trial of this matter. Accordingly, I must proceed to the next step of the McDonnell Douglas analysis.

## b. Non-Discriminatory Explanation

As it is possible that Groff could establish a prima facie case of discrimination, the burden now shifts to Defendant to establish a legitimate, non-discriminatory reason for its action. Abramson v. William Patterson Coll. of NJ, 260 F.3d 265, 282 (3d Cir. 2001). The burden on defendants at this juncture is "relatively light." Fuentes v. Perskie, 32 F.3d 759, 763 (3d Cir. 1994). Defendant can meet this burden by setting forth evidence that the Postal Service was in serious financial distress, needed Sunday Amazon delivery to be successful, and therefore needed Groff and all RCAs to be in attendance. Accordingly, the burden now shifts back to Groff to prove by a preponderance of the evidence that the legitimate reasons offered by Defendant were a pretext for discrimination.

## c. Pretext

To demonstrate pretext, a plaintiff must provide evidence either that the decision maker was motivated by animus or that shows the proffered explanation to be fabricated. Atkinson v. Lafayette Coll., 460 F.3d 447, 454 (3d Cir. 2006). To prove pretext, a plaintiff must demonstrate "weaknesses, implausibilities, inconsistencies, incoherencies, or contradictions in [defendant's] proffered legitimate reasons for its action that a reasonable fact finder could rationally find them unworthy of credence, and hence infer that [defendant] did not act for the asserted non-discriminatory reasons." Fuentes, 32 F.3d at 765. (emphasis in original.)

To show pretext, Groff must produce evidence that he was treated differently with regards to Sundays because he was a Christian or that Defendant's explanation of the need for Amazon Sunday delivery to be successful was fabricated. He can do neither. Not one decision-maker ever made a negative comment to Groff about his religion or his observance of it. All decision-makers denied anti-religious animus, and several of them were Christian themselves. Groff cannot prove pretext by suggesting or speculating that there was anti-Christian animus in the USPS. He must prove it and he clearly has not. Similarly, there is certainly evidence that Sunday Amazon delivery was very important but challenging for Defendant, and that the USPS struggled to get RCA's to work on Sundays. There is no evidence in the record of fabrication by Defendant. Accordingly, Groff cannot prove that Defendant's reasons for his discipline were a pretext for discrimination and his disparate treatment claim must fail.

## B. FAILURE TO ACCOMMODATE

Title VII failure to accommodate claims are also governed by a burden-shifting framework. E.E.O.C. v. GEO Grp., Inc., 616 F.3d 265, 271 (3d Cir. 2010). Under this framework, the plaintiff again has the initial burden of proving a prima facie case. Id. If he does, the burden then shifts to the employer to show either: (1) it made a good-faith effort to reasonably accommodate the plaintiff's religious belief, or (2) that such an accommodation would cause an undue hardship to the employer.

To establish a prima facie case of religious discrimination, the employee must show: (1) he holds a sincere religious belief that conflicts with a job requirement; (2) he informed his employer of the conflict; and (3) he was disciplined for failing to comply with the conflicting requirement. GEO Grp, 616 F.3d at 271, citing Webb v. City of Phila,

562 F.3d 256, 259 (3d Cir. 2009). The burden [then] shifts to the employer to show either [1] it made a good-faith effort to reasonably accommodate the religious belief, or [2] such an accommodation would work an undue hardship upon the employer and its business. Id. (citations omitted).

In the instant matter, Defendant does not argue that Groff cannot establish a prima facie case. Rather, Defendant argues that he has two defenses to Groff's failure to accommodate claim that cause him to prevail in this matter.

## 1. Reasonable Accommodation

Title VII does not require an employer offer every accommodation, it need only offer a reasonable accommodation. Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60, 70 (1986). "Title VII does not define what is a 'reasonable accommodation,'" but the Supreme Court has "made clear" that "a sufficient religious accommodation need not be the 'most' reasonable one (in the employee's view), it need not be the one that the employee suggests or prefers, and it need not be the one that least burdens the employee." Shelton v. Univ. of Med. \& Dentistry of N.J., 223 F.3d 220, 225 (3d Cir. 2000) (citing Ansonia Bd. of Educ., 479 U.S. at 68-69986)). Simply put, when the employer offers any reasonable accommodation, the statutory inquiry must end. See id.

Defendant argues that he accommodated Groff's religion in four ways. First, by allowing him to take another day off as a day of worship in a week when he was scheduled to work on a Sunday. Second, by allowing Groff to come in late on Sunday after church services if he was scheduled on a Sunday. Next, by excusing him from work on a Sunday if management could find coverage for Groff when he was scheduled, and lastly, by excusing Groff if he could find his own coverage for a Sunday when he was
scheduled. (ECF No. 36, p. 22.) Defendant argues that these scenarios were a reasonable accommodation, as the latter two accommodations wholly resolved the conflict between Groff's work and his religion, because if a shift swap was arranged, either by management or by Groff himself, there was no conflict.

In response, Groff claims that in order to be reasonable, an accommodation must fully eliminate the conflict between work and religion, and that shift swapping does not do so because if another employee does not take Groff's Sunday shift, he is not accommodated. In support of this argument, Groff relies upon a circuit split (also discussed by Defendant) as to whether an accommodation need to wholly eliminate the conflict to be reasonable. Compare EEOC v. Firestone Fibers \& Textiles Co., 515 F.3d 307 (4 ${ }^{\text {th }}$ Cir. 2008); Sturgill v. United Parcel Service, Inc., 512 F.3d 1024, 1032-33 ( $8^{\text {th }}$ Cir. 2008) with Morrisette-Brown v. Mobile Infirmary Medical Center, 506 F.3d 1317, 1322 (11 ${ }^{\text {th }}$ Cir. 2007); Baker v. Home Depot, 445 F.3d 541, 548 (2d Cir. 2006); Wright v. Runyon, 2 F.3d 214, 217 ( $7^{\text {th }}$ Cir. 1993). The Third Circuit has never squarely addressed this issue, but District Courts have held that an accommodation need not completely eliminate a conflict in order to be reasonable. See Miller v. Port Auth. of N.Y. \& N.J., 351 F.Supp.3d 762, 778 (D.N.J. 2018); E.E.O.C. v. Aldi, Inc., 2008 WL 859249, at *13 (W.D. Pa. Mar. 28, 2008).

Lacking any Third Circuit authority to the contrary, I find that an employer does not need to wholly eliminate a conflict in order to offer an employee a reasonable accommodation. Accordingly, Defendant did not need to completely eliminate the conflict for its offer of accommodation to Groff to be considered reasonable. Further, Trans World Airlines, Inc. v. Hardison, 432 U.S. 63, 77-78 (1977) held that voluntary
shift swapping may be a reasonable accommodation. See also Miller, 351 F.Supp.3d at 781. In this matter, Defendant made accommodations, as management offered to help with shift swapping, and Groff was also permitted to arrange his own shift swaps. Groff was not happy with these accommodations, but that does not make them unreasonable. An employer is not required to offer an employee his preferred accommodation where an adequate accommodation has already been provided. See Miller, 351 F.Supp.3d at 778, citing Prise v. Alderwoods Grp., Inc., 657 F.Supp.2d 564, 601 (W.D. Pa. 2009). I find Defendant offered Groff reasonable accommodations and summary judgment should therefore be granted to Defendant on Count II of Plaintiff's Complaint.

## 2. Undue Hardship

Typically, where a reasonable accommodation is found, "the statutory inquiry is at an end." Ansonia, 479 U.S. at 68 . However, in the alternative, I will briefly address the undue hardship that would be suffered by Defendant if Groff were permitted his desired accommodation of being skipped over in the schedule every Sunday. An employer must reasonably accommodate an employee's religious practices unless accommodation would cause an undue hardship. TWA v. Hardison, 432 U.S. 63, 71-72 (1977). An accommodation that imposes anything more than a de minimus cost on an employer causes such a hardship. Id. at 84. In examining an undue hardship, courts evaluate both economic and non-economic costs. Webb v. City of Phila., 562 F.3d 256, 259-60 (3d Cir. 2009.) " $[\mathrm{E}]$ mployers must be given leeway to plan their business operations and possible accommodative options in advance, relying on an accommodation's predictable consequences along the way." Firestone Fibers \& Textiles Co., 515 F.3d at 317. If an accommodation would violate a CBA or impose more than a de minimis impact on co-
workers, "then [the employer] is not required to offer the accommodation under Title VII." Id. (citing Balint v. Carson City, 180 F.3d 1047, 1054-55 (9th Cir. 1999).

In this matter, Defendant provides evidence of multiple instances of undue hardship if Groff were given his preferred accommodation and Groff raises numerous legal arguments in an attempt to defeat that evidence. However, there is no need to examine each and every argument, as TWA v. Hardison clearly shows that violation of a collectively bargained agreement is an undue hardship. 432 U.S. 63, 79. In the instant matter, allowing Groff to be skipped in the schedule every Sunday would be a clear violation of the MOU. Groff knew that as an RCA, he would be a part-time carrier who covered for regular carriers when needed and that he had no contractual right to specific days off. Beginning in 2016, pursuant to the MOU, all RCAs had to be available to work weekends. On any given Sunday, pursuant to the MOU, management would first schedule assistant rural carriers, then volunteer RCAs, then non-volunteer RCAs as needed on a rotating basis. This arrangement was negotiated and agreed upon by Defendant and the union representing Groff.

Skipping Groff in the Sunday rotation and never scheduling him to work on that day of the week would clearly violate the process carefully laid out in the MOU. As a non-volunteer RCA, pursuant to the MOU, Groff had to be available if there were no ARCs or volunteer RCAs available for Sunday shifts. There was no mechanism set forth in the MOU for an RCA to be skipped over in the Sunday scheduling. The parties agree that the MOU was collectively bargained, governed RCAs and generally required RCAs to work Sundays, with only three exceptions. Those exceptions were: 1) approved leave; 2) to prevent overtime; and 3) where an RCA was on long-term assignment covering for
a full-time career carrier. Groff makes much of the "approved leave" exception, arguing that the phrase "approved leave" as used in the MOU would include religious accommodations such as the one that he sought in this matter. ${ }^{2}$ Groff also argues that $T W A$ is distinguishable because in that CBA, union employees were selected for shifts based upon seniority, and the MOU at issue here was not seniority based.

First, it is completely irrelevant that the CBA in TWA v. Hardison was senioritybased while the MOU in this matter is not. Both the TWA CBA and the MOU were bargained for by the union representing the employee and the employer. How each agreement chose to assign shifts to its employees is of no consequence. Both agreements were bargained for and agreed upon. The MOU should stand on its own and must not be violated.

Next, the phrase "approved leave" as used in the MOU is not defined in that document. However, both the Postal Service and the Union viewed this phrase to include accrued, annual leave, something Groff did not have and could not earn. Further, it strains credulity to think "approved leave" would include the type of permanent religious leave sought by Groff that would exempt him from Amazon deliveries every single Sunday. Clearly, this phrase is meant to include the type of occasional leave an employee earns and uses sporadically. Accordingly, pursuant to TWA, Defendant in this case has more than met the de minimus standard necessary to prove undue hardship, as Groff's preferred accommodation of being skipped in the schedule every single Sunday would violate the MOU.

[^1]Further, even if the MOU did not exist, Defendant has identified multiple other hardships that would easily meet the de minimus standard necessary to prove an undue hardship. Of particular note would be the impact on the Holtwood Post Office. There were times during Groff's employment that the Holtwood station only had two RCAs, one being Groff. If Defendant passed over Groff in the schedule every Sunday, the other RCA in Holtwood would be required to work every single Sunday without a break. Many courts have recognized that an accommodation that causes more than a de minimus impact on co-workers creates an undue hardship. See Miller, 351 F.Supp.3d at 789; see also Harrell v. Donahue, 638 F.3d 975, 980 (8th Cir. 2011) (providing postal worker with Saturdays off would have burdened co-workers with more weekend work); Aron $v$. Quest Diagnostics, Inc., 2005 WL 1541060, at * 1 (D.N.J. June 30, 2005) (granting summary judgment for employer where plaintiff, who was not hired as phlebotomist which required two Saturday shifts per month, because accommodation would have created undue burden on existing employees to work more Saturdays), aff'd, 174 Fed. App'x 82, 83 (3d Cir.) (recognizing that proposed accommodation would constitute undue hardship, in part, because it "would result in unequal treatment of the other employees and negatively affect employee morale."), cert. denied, 549 U.S. 973, 127 S.Ct. 393 (2006); Lee v. ABF Freight System, Inc., 22 F.3d 1019, 1022-24 (10 ${ }^{\text {th }}$ Cir. 1994) (noting that employer is not required to assign another employee to perform plaintiffs duties, which would have resulted in alteration of employees' time off); Prise, 657 F.Supp.2d at 599-600 (stating that "courts have consistently held that Title VII does not require an employer to force other employees to work on a particular day in order to accommodate a specific employee's desire to observe a religious holiday or

Sabbath"); Sanchez-Rodriguez v. AT\&T Wireless, 728 F.Supp.2d 31, 43-44 (D.P.R. Aug. 5, 2010) (finding that proposed accommodation "to disrupt ... neutral scheduling system" and give Sabbath employee every Saturday off would be undue burden because other employees would have to cover plaintiffs Saturday shift); Vaughn v. Waffle House, Inc., 263 F.Supp.2d 1075, 1085 (N.D. Tex. 2003) (holding that "Title VII does not require an employer to impose additional responsibilities on an employee's coworkers in accommodating that employee's religious beliefs" by requiring other employees to work employee's weekend shift). The impact that would be felt by the other RCA at the Holtwood post office if Groff was permitted to be skipped in the schedule every Sunday would clearly be more than de minimus, and Defendant meets its burden of proving undue hardship.

Therefore, even if Defendant did not make a reasonable accommodation to Groff by allowing shift-swapping, his claim of discrimination still must fail because Defendant has demonstrated undue hardship. Summary judgment in favor of Defendant is warranted on Count II of Plaintiff's Complaint. ${ }^{3}$

Groff also filed a Motion for Partial Summary Judgment in this matter, seeking an entry of judgment on Count II of his Complaint. As discussed above, I find both that Defendant offered Groff a reasonable accommodation, and that Defendant would suffer

[^2]undue hardship if Groff was permitted to skip Sunday shifts. Accordingly, Groff's motion for summary judgment on Count II of his Complaint is denied. ${ }^{4}$

## V. CONCLUSION

For the reasons set forth above, Defendant's Motion for Summary Judgment is granted, Plaintiff's Partial Motion for Summary Judgment is denied, and Plaintiff's Complaint is dismissed. An appropriate order follows.

[^3]
## CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2021, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF System, which will send notice of such filing to all registered users.

Dated: July 28, 2021
/s/ Christopher E. Tutunjian
Christopher E. Tutunjian

No. 21-1900

## IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Gerald E. Groff, Plaintiff-Appellant, v.

Louis DeJoy, Postmaster General, United States Postal Service, Defendant-Appellee.

On Appeal from the United States District Court for the Eastern District of Pennsylvania
No. 5:19-cv-01879-JLS
Honorable Jeffrey L. Schmehl

## JOINT APPENDIX - VOLUME II OF III <br> PP. 32- 526

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

| GERALD E. GROFF, | $:$ |
| :--- | :--- |
|  | $:$ |
| Plaintiff, | $:$ |
| v. | $:$ |
|  | $:$ |
| MEGAN J. BRENNAN, | $:$ |
| POSTMASTER GENERAL, | $:$ |
| UNITED STATES | $:$ |
| POSTAL SERVICE, | $:$ |
| Defendant. |  |

## DEFENDANT'S STATEMENT OF FACTS ${ }^{1}$

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 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. 318:24319:1.)
${ }^{1}$ 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."
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; USPS0035³; Groff Dep. 50:12-17, 53:1854:7) 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.)
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, noncareer 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. (USPS0001819.)
14. One of the requirements for being an RCA is being flexible. (Groff Dep. 148:6-8.)
${ }^{3}$ 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."
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. $\boldsymbol{\|} 3$.) ${ }^{5}$ They do not generally earn "leave" or time off. (USPS00271). They are scheduled on an asneeded 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-recordlosses/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.)
20. It was critically important to the USPS that Sunday Amazon delivery be successful. (Hess Decl. 94.$)$
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.

[^4]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 parttime 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 approximately11 mail routes. (Groff Dep. 111:1-4; Hess Decl. 95 .)
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. ब7.) 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; 340:19.)
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. 96 .) At times the Holtwood station was down an RCA. (Hess Decl. 96.)
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. 156:21157:4.)
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.)
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
${ }^{6}$ Cited portions of Postmaster Hess's deposition are attached as Exhibit "F."
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. 189:1422.)
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.
${ }^{7}$ 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."
(Hess Decl. ๆ10.) Looking for coverage for the plaintiff was a time consuming process, and it added to his workload as well as those 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. ${ }^{11}$
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,
${ }^{9}$ 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 documents. They are therefore marked separately from the remainder of the referenced documents produced by the defendant.

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.
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. 99.)
62. During peak season in 2017, RCA Moyer was not working because she was injured. (Hess Decl. 98 .) RCA Tekely and the plaintiff were the only two RCAs at Holtwood. (Hess Decl. 98 .)
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. 911.$)$
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. 45:1756:4.)
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 iss 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; USPS0048083.) 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 $7: 10 \mathrm{pm}$ while the plaintiff ended his shift at $4: 51 \mathrm{pm}$. 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 $6: 55 \mathrm{pm}$ while the plaintiff ended his shift at $4: 51 \mathrm{pm}$. Id.
103. Second, the plaintiff also claimed that Postmaster Hess "mocked" him. (USPS00363415.) 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).

Dated: February 14, 2020

WILLIAM M. McSWAIN<br>United States Attorney<br>/s/ Susan R. Becker for GBD<br>GREGORY B. DAVID<br>Assistant United States Attorney<br>Chief, Civil Division<br>/s/ Veronica J. Finkelstein<br>LAUREN DeBRUICKER<br>VERONICA J. FINKELSTEIN<br>Assistant United States Attorneys<br>615 Chestnut Street, Suite 1250<br>Philadelphia, PA 19106<br>Phone: (215) 861-8492/8598<br>Email: lauren.debruicker@usdoj.gov<br>veronica.finkelstein@usdoj.gov

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## Exhibit "A"

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

| GERALD E. GROFF, | $:$ |
| :--- | :---: |
| Plaintiff, | $\vdots$ |
| v. | $\vdots$ |
| MEGAN J. BRENNAN, | $\vdots$ |
| POSTMASTER GENERAL, UNITED | $\vdots$ |
| STATES POSTAL SERVICE, | $\vdots$ |
| Defendants, | $\vdots$ |

## 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 noncareer 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 parttime 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; Sheddy 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 nonpeak 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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Exhibit "B"

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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA
$\qquad$

CIVIL ACTION NO. 19-CV-1879

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.

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pursuant to the federal rules in a piece of litigation that you have initiated as the plaintiff, the person who's bringing the lawsuit, against the head of the United States Postal Service, your former employer.

Do you understand that?
A. Yes.
Q. And that you sued the Postal Service claiming that you experienced discrimination on the basis of race; is that correct?

MR. CROSSETT: Objection.
MS. FINKELSTEIN: Sorry. My bad.
BY MS. FINKELSTEIN:
Q. You are suing the Postal Service claiming that you experienced discrimination on the basis of religion?
A. That would be true.
Q. And also that you were not accommodated by your former employer, the United States Postal Service, when you requested a reasonable accommodation on the basis of religion?
A. Yes.
Q. Are those the only two claims that you understand to be part of the lawsuit that we're talking about today?
A. That I understand, yes.
front of each other so some of these questions may sound a little silly, but we're going to have a written
transcript, not a video, so I want to make sure all of this is clear or the record.

What is your full name?
A. Gerald Edward Groff.
Q. Did you ever go by any other names?
A. No.
Q. What is your date of birth?
A. October 8th, 1977.
Q. So how old are you sitting here today?
A. 42 years old.
Q. And what is your sex?
A. Male.
Q. What is your race?
A. White.
Q. What is your religion?
A. Christian.
Q. I apologize. I want to make sure that

I accurately describe this. I have seen some written in the documents, Bible believing Christian.

Is that different in some way?
A. Only to the distinction that I believe the Bible is true and that's what I follow.
Q. So could I use either term to describe

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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

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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
emergency care would be necessary on Sundays. So those things would be excused, according to my understanding.
Q. So if I understand it correctly, it's not a distinction between religious work and non-religious work; it's a distinction between necessary work and non-necessary work. You can perform necessary work on Sunday; there's an exemption from the day of rest for necessary work?
A. I think it would be in a situation -situationally appropriate. It's a matter of conscience that you have to examine the particulars of a situation. I'm not sure that \(I\) understand your question completely. You're saying religious versus non-religious.
Q. My question is, I think what you said is that some type of work is appropriate on Sunday, and I'm trying to understand what work is appropriate on Sundays. Is it difference between secular work and non-secular work or the difference between emergency necessary work and non-emergency, non-necessary work, or maybe some other distinction that I'm not understanding?
A. Yeah. You can be a secular doctor and that would be necessary. So I'm not saying only a Christian hospital could work if we're using that example. My understanding is that a mother can prepare her food for her family on a Sunday without breaking
the Lord's day. We need ambulances, we need police officers, we need -- there's necessary parts of society. In contrast, 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.
Q. Are deeds of necessity defined somewhere?
A. In the Bible Jesus gave an example of allowing his disciples to feed themselves by picking grain on the Sabbath in that situation. He healed people on the Sabbath. I see that as an example of doctors caring for people, and if that would be an example of where we take that from.
Q. Do you view that as an exhaustive complete list or an illustration of the things that may be deeds of necessity?
A. I think it's the spirit of what's being interpreted.
Q. So that's not an exhaustive list? You have to look at the spirit of activity to determine whether or not it's a deed of necessity?
A. I believe so.
Q. Now, you sat in during the depositions that we took this week of Mr. Hess and Ms. Evans on Tuesday, Mr. Sheddy and Mr. French, Mr. Gains on

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Q. When did you stop considering yourself to be part of the denomination of Mennonite?
A. Probably about the time that I left the Mennonite church and went to another church.
Q. When was that?
A. To the best of my recollection, about 2005.
Q. So it was after you graduated from high school and also after college?
A. Yes.
Q. And then after high school, you went to university, Millersville University; is that correct?
A. After high school I went to Millersville University.
Q. What years were you at Millersville?
A. I started in 1996. That would be the fall right after high school, and I finished in May of 2001.
Q. Is that a secular university?
A. Yes.
Q. Doesn't have any religious affiliation at all?
A. Not that I'm aware.
Q. What degree did you receive?
A. Bachelor's of science in biology.

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Q. Yeah.
A. When I look at this there's a lot of information on each page.
Q. Just flip to the page that's USPS 35.
A. Yes.
Q. You see also a section numbered section seven, right?
A. Yes.
Q. And we already discussed the fact that you got your teaching certification in 2004, correct?
A. Approximately, yes.
Q. So what it has on this employment
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application as the first job that you have listed, is

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from 2002 to 2004. And the job title is foreign expert,
slash, college course instructor.

Do you see that?
A. Yes.
Q. And the name of the employer is English
Language Institute, slash, China in Colorado; is that
correct?
A. Yes.
Q. \(\quad\) So is it true that your first job that you had out of college after you got your bachelor's of science degree was this job as a foreign expert college course instructor through English Language Institute?

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University in May 2001. Some point shortly after, I started working for Penn State. The position itself only existed for the summer because that's when you grow the produce. So I think in the fall, I was finished there, and then the following year, in 2002, in the fall, I went to -- started at Azusa Pacific.
Q. So if that's correct, am I right in saying that you only worked for Penn State just for the summer of 2001?
A. It was nine months approximately. That's the best of my memory.
Q. How much did you get paid when you worked at Penn State?
A. My best estimate or best recollection is about nine dollars an hour.
Q. It was a temporary position that ended?
A. It was a seasonal.
Q. Was the next job that you had after

Penn State being a foreign expert college course instructor?
A. Yes.
Q. It looks like that was a volunteer position, at least according to what you have on the --
A. That's what I said there because I was trying to put in one word what it was. But I believe I

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explained to you earlier that it was a missionary situation where \(I\) was actually -- the way -- because China is a closed country it's a communist country, I went as a foreign expert by raising support here in America to go over there. And they had a contract with the Chinese University to pay us enough to live there while we worked.
Q. So you were paid a stipend to live while you were living in China but you were not paid a salary on top of that?
A. Yes.
Q. In terms of what you told the Postal Service, you characterized that position as a volunteer position?
A. Yes.
Q. And then the next position that you have listed here is in box six.

It says that you were unemployed between 2004 and 2007; is that correct?
A. All of my very detailed work history, it was included in my interrogatories. So remembering back that long ago, I can't be certain of accuracy without looking.
Q. Do you remember being unemployed after you came back from China?

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A. Because my motivation is not money; my motivation is to serve the Lord.
Q. Is that still your motivation?
A. Of course.
Q. So you still would give up a paying job to take a volunteer position if you felt that was serving the Lord?
A. If that was my conviction to do so.
Q. So after you left Sight and Sound Ministries, it looks like the next place you have listed on this page of your job application in box four is Dove School of Global Transformation.

Was that your next position after Sight and Sound?
A. Yes.
Q. And it says you were a team leader,
slash, full-time staff position?
A. Uh-huh.
Q. What that the job?
A. Yes.
Q. It says you were a volunteer; is that correct?
A. Correct.
Q. So it was unpaid?
A. It was unpaid.

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Q. Were you only signed up for a one school year term with Dove School of Global Transformation?
A. Yes. I agreed to do one school year.
Q. Did the job at Dove School of Global Transformation require your bachelor's degree in biology?
A. No.
Q. Did it require your teaching certification to teach English as a second language?
A. It was helpful but, no. It did not require it.
Q. And then it looks like you went back to Sight and -- then it looks like you were unemployed from March 2008 until June 2008, if we flip to the next page which is United States Postal Service 33; is that correct? Were you employed for three months after the school year ended following the time you were with Dove School of Global Transformation?
A. Yeah. That sounds correct. There's usually a lag time between service and finding another job.
Q. And then it looks like the next job you had, according to this application in box number two, is that you went back to Sight and Sound Ministries and you

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were there from June 2008 until October of 2009; is that
correct?
A. Could you point me to the box?
Q. Box two.
A. Okay. Yeah that sounds correct, to the best of my recollection.
Q. So when you returned to Sight and Sound you had a different job title. Instead of being stage technician, deck crew, you were the lead custodian?
A. True.
Q. Is that a promotion, a lateral
position, a demotion? What is that?
A. It's just a different department.
Q. Why did you change departments when you were returned to Sight and Sound Ministries?
A. I looked at what they had available, positions to fill, and $I$ took the one that they offered.
Q. And what did you do as a lead

``` custodian?
A. As I said earlier, working at Sight and Sound is a live production company. And the theater needs to be cleaned up after each show. So I would come in at midnight, report for my shift and work until 8:00 in the morning after all the shows were finished to clean up the entire building to have it ready for the

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and decided.
Q. It looks like in box 62 your base salary 13 dollars and five cents an hour?
A. That sounds correct.
Q. So as a temporary relief carrier, you were not guaranteed a particular number of hours?
A. Correct.
Q. You didn't have a set schedule every week?
A. Correct. I mean, if the route that I was assigned to had a particular day off assigned to it, that would be my regular schedule.
Q. You would commonly cover a particular day off, but you might be asked to cover different days or to flex your schedule in other ways as well?
A. My answer was that -- for example, if I was on route four, which is where I remember I started in this position, that route has a Saturdays off each week. It was a K route. So that would have been a regular -- I would assume \(I\) was always working on Saturdays every week.
Q. But the postmaster could also ask to work on a Friday and ask you to work on a Tuesday, correct?
A. He could ask.

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Q. It might be possible that even though Friday was the usual drop day or the day the regular carrier did not work, there might be reasons why somebody else would cover that Friday instead of you?
A. Could you repeat that?
Q. Even though you mentioned that as a temporary relief carrier, you often would work on the day that the regular career full-time carrier had a day off for that route, other things could happen that could cause you to work a different schedule?
A. I think my earlier answer was that they would -- it is possible that they could ask me to work another day of the week.
Q. And as a temporary relief carrier, your job was to fill in the mail carrying that was being done by full-time career carriers?
A. If by fill in you mean to cover in their absence, yes.
Q. And you used your own personal vehicle to deliver the mail?
A. Yes.
Q. The Postal Service didn't provide you with a truck?
A. Not at this time.
Q. You were not guaranteed a certain
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

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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.

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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

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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

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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
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the fall of '16 not '15.

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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.

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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.

Q. You think if I say the word resigned
that that is not an accurate way to describe the terms under which you left the Postal Service?
A. That's what it says on here on Form 50. But I didn't write that.
Q. My question is if I use the term resigned to describe the circumstances under which you left the Postal Service, would that be in your opinion as accurate description of how you left?

MR. CROSSETT: Objection. Asked and answered.
He testified he thinks constructive discharge is accurate.

BY MS. FINKELSTEIN:
Q. Do you think that resigned is inaccurate in terms of a description?
A. I think it's insufficient as an answer.
Q. But not inaccurate, just incomplete?
A. It's inaccurate by definition because it's incomplete.
Q. So when you stopped working at the United States Postal Service there were three full-time career carriers at Holtwood?
A. Sorry. I was thinking about the last question. Could you repeat?
Q. When you stopped working for the United States Postal Service there three full-time career

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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.

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of the job when you applied to transfer to the Holtwood office, correct?
A. It was my understanding that the --

MR. CROSSETT: Object to the form. You may answer.

THE WITNESS: Can you repeat that? BY MS. FINKELSTEIN:
Q. You knew that Sunday work might be part of the job when you applied to transfer to the Holtwood office?

MR. CROSSETT: Object to the form.
THE WITNESS: When I applied to transfer to Holtwood in 2016, I had every reason to expect that because the Holtwood Post Office was exempt from Sunday Amazon work, that I also would be exempt from Sunday work.

BY MS. FINKELSTEIN:
Q. Nobody ever promised you that the Holtwood Post Office would remain exempt from Sunday work, correct?
A. I based my decision on the history that Holtwood had never delivered Amazon on Sundays to that point.
Q. But nobody ever promised you that the Holtwood Postal Service would continue to be exempt from

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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?

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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.

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Q. He remained the postmaster the entire time that you were assigned to the Holtwood Postal Service?
A. Yes.
Q. And there was a full-time career carrier assigned to each of the three routes in Holtwood?
A. Yes.
Q. And there could be up to three rural carrier associates who were also assigned to Holtwood?
A. Generally speaking, that's the policy, to assign one sub to one route.
Q. And the way it worked was each rural carrier associate had priority of full-time carrier routes that they would cover for?
A. Are you speaking of the matrix?
Q. Yes.
A. That's typical, to have a matrix.
Q. Which was your primary?
A. Route one.
Q. There's a full-time career carrier; who was that?
A. Mary Trimble.
Q. If she was out, you would be the first person who the postmaster would call to cover the route
wanted me to deliver. When I was finished, I was done. BY MS. FINKELSTEIN:
Q. It could vary day-by-day; some days you would have a lot of packages and some days not a lot?
A. It's dependent on volume.
Q. Do you agree with that part of being a rural carrier associate is being flexible?
A. That would be pretty close to accurate.
Q. As a rural carrier associate, you did not earn leave?
A. True.
Q. So you were not entitled to take a week off?
A. I can request leave without pay to be excused for a vacation or something like that.
Q. You could request it but you weren't entitled to have it?
A. In the sense that the contract does give certain rights for carriers to be able to use the benefits, I did not have that.
Q. But Mr. Hess, when he was postmaster, he did let you use leave without pay to take vacations?
A. Yeah. I took a family vacation each year.
Q. Even though he didn't have to let you

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today?

MR. CROSSETT: Object to the form. You can answer.

THE WITNESS: I would say there were days I was unavailable. Of course, he may have called me but I didn't get the message. BY MS. FINKELSTEIN:
Q. In the time period that we're talking about when you first came to Holtwood until March of 2017, did you get along well with Postmaster Hess?
A. I would generally. We had a good relationship; as good as a supervisor and employee can have.
Q. During that time period did you get along well with the other employees in the Holtwood station?
A. Yes.
Q. Did anybody around that time period ever make any negative comments about your religion?
A. I don't believe so.
Q. Were you ever disciplined in that time period?
A. No. We're talking about until March of 2017?
Q. Yes.
A. So you're talking about when I was hired at Holtwood until March 2017?
Q. Correct.
A. I did not receive any discipline.
Q. Were you ever required to work on a Sunday during that time period?
A. No.
Q. Were you ever scheduled to work on a Sunday during that time period?
A. My understanding is that it started -my recollection is that it started in March 2017 for the first time.
Q. Who were the rural carrier associates who were assigned to the Holtwood post office in that time frame?
A. When I was transferred there Mike Binkley. And Caroline Ferrera. I'm not sure how to spell that.
Q. Did both of those rural carrier associates leave the Holtwood office prior to March of 2017?
A. I don't remember when they left exactly. I believe they were there for a while after I started in August 2016.
Q. Had they left by the time the Holtwood
A. That's what's reported in the news.
Q. And as part of that process, they were also losing staff?

MR. CROSSETT: Object to the form. Is that a question? BY MS. FINKELSTEIN:
Q. Yeah. Is that your understanding?
A. I'm not privy to management staffing
numbers. I don't know. I personally can say staff left for various reasons during my career. I don't know what was happening on a general level.
Q. But in your experience at the post offices where you worked staff was leaving?
A. And being re-hired. It was always a matter of revolving.
Q. Did you understand based on what was reported in the news or communicated to you at the Postal Service that in 2013 the Postal Service signed an agreement with Amazon to deliver Amazon packages?
A. I'm not sure about that. The way I understood it is that there was an agreement made with Amazon at some point.
Q. Did you understand that the reason the Postal Service entered into that agreement was because it was having financial difficulty in delivering Amazon

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packages and it was viewed as a way to make some money by the Postal Service?
A. I wasn't aware of the Postal Service's motivation for signing this contract.
Q. You never followed any of the news articles, even though you were a Postal Service employee?
A. Only to the degree that they interested me.
Q. And you weren't interested in that?
A. I was aware of it. I didn't pursue that very far.
Q. Did you at some point come to understand that the Amazon contract would require the Postal Service to deliver packages on Sundays?
A. Eventually I was made aware of that requirement.
Q. Were you also aware that the delivery of packages for Amazon didn't happen for every post offices in the entire United States Postal Service across the United States at the same time, but rather it happened on a rolling basis?
A. I wasn't aware of how it happened on a national level. I can only -- the only thing I can speak to certainly is that \(I\) was aware that it took a

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while to happen, and in a way that affected me.
Q. It came to Quarryville before it came to Holtwood?
A. True.
Q. At the time you transferred to the Holtwood Post Office you knew there were some United States Postal Service stations in Pennsylvania that were at that time doing Sunday Amazon delivery?
A. I was aware and Holtwood wasn't.
Q. Did you understand that the union had negotiated how Amazon Sundays were going to be handled on behalf of the union members and other employees at the Postal Service?

MR. CROSSETT: Object to the form.
THE WITNESS: Could you perhaps rephrase the question? BY MS. FINKELSTEIN:
Q. Let me ask a different question. Were you a member of the National Rural Letter Carrier Association when you were working for the United States Postal Service?
A. To give an accurate answer, I never paid my dues but in effect, I was because I was covered under the rural carrier contract as a rural carrier associate.

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BY MS. FINKELSTEIN:

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Q. So we just came back from a break. Is there anything about your prior answers that you feel you need to amend or correct?
A. No.
Q. So let me show you what I'm marking as Exhibit 18.
(Exhibit No. 18 marked.)
MS. FINKELSTEIN: It's a memorandum of understanding. It's bates number 1130, USPS, down at the bottom.

MR. CROSSETT: It's a multipage document.
MS. FINKELSTEIN: Sorry; 1130 through 1131. BY MS. FINKELSTEIN:
Q. Have you seen this before today?
A. I've seen portions of it, I believe.
Q. It says at the top that it's negotiated
between the United States Postal Service and the National Rural Letter Carriers Association, the NRLCA, that's the same union we were previously talking about, correct?
A. That's the union, yes.
Q. The one that represented your interests even if you're not a member when you were a Postal Service employee?

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A. Yes.
Q. And at least as you understand this union agreement, would you agree with me that this is post office wide, this agreement?
A. Generally speaking, when there's an agreement made between that union and Postal Service that would be national.
Q. And this agreement is national in scope?
A. Yes.
Q. It's not specific to the central
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Pennsylvania district?

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A. No.
Q. Or specific to Holtwood or Lancaster?
A. It's national.
Q. It's signed on May 24th, 2016. If you look at the second page.
A. May 24 th, 2016 .
Q. So this agreement was signed and in
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place before you transferred to the Holtwood Post

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Office?
A. That would be true because I transferred in August of 2016.
Q. And you understand that memorandum of understanding, like this one, to be an agreement that

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the union has negotiated with the Postal Service?
A. I understand it now. I did not understand it back then.
Q. Okay. Are memorandums of understanding distributed to Postal Service employees, in your experience?
A. I never received one.
Q. Were they available online, do you know?
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    A. I don't know. I testified previously
    I'm not very good with Light Blue, if that's what you
are talking about.
Q. Do you know whether they're available
freely on the Internet even to people who are not Postal
Service employees?
A. I never did -- I'm not aware if that's
possible.
Q. So I want to look at the memorandum of
understanding in specific. It starts off at the
beginning by saying, the parties recognize the
importance of successfully implementing the continued
expansion.
A. Sorry.
Q. The very first sentence. The parties recognize the importance of successfully implementing

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the continued expansion of Sunday, slash, holiday parcel
delivery service which began testing on October 13th.
That's the first sentence. Do you see that?
A. Yes.
Q. Is it consistent with your experience at the Postal Service that Amazon Sunday delivery started in some areas back in October of 2013?
A. I personally do not have knowledge of when it started.
Q. Okay. Do you have any reason to doubt that they began testing Sunday Amazon delivery back in October of 2013?
A. I would assume that if this agreement was made as stated between the Post Office and my union, that that's what happened.
Q. And then the next sentence says, the parties agree that rural carrier leave replacements will be assigned as appropriate to complete Sunday, slash, holiday parcel delivery.

That's what the second sentence says?
A. Yes.
Q. Is a rural carrier associate considered a rural carrier leave replacement?

MR. CROSSETT: I object to the extent it calls for a legal conclusion.

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A. Yes.
Q. But once you did see the list, the list did have associate rural carriers on the list?
A. When Christmas -- when Amazon delivery began in my post office, which was Quarryville in 2015, we didn't have ARC yet. But I'm aware that on that list at some point there were ARCs.
Q. This agreement is dated 2016, so that agreement wasn't in place in 2015, correct?
A. True.
Q. So this agreement was -- came into
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effect after Christmas of 2015, at least

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chronologically?
A. Correct. But just to add in 2016, regardless of whether Holtwood was required to do Amazon delivery on Sundays or not, which is my reason for going there, there was no ARCs at Holtwood either. So this topic wasn't something that \(I\) was thinking about at the time.
Q. Understood. Because an office has to be of a certain size in order to have an associate rural carrier assigned to that office?
A. Yes.
Q. And Holtwood is not big enough to meet that threshold?

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a hub office, was my only experience with this until Christmas of 2017 when Brian -- the hub work down, and Brian did it his way for the Holtwood Post Office. So my awareness, of the completeness of your question, took a whole year for that to happen. I was aware of what Lancaster was doing when they did it March of 2017. I was aware of the way Brian was going to do it for Christmas peak season nine months later in Christmas of 2017 at Holtwood.
Q. Why don't we take a minute and talk about peak season versus non-peak season, coupling versus non-coupling.

During what is known as non-peak season, once Amazon delivery came to the central Pennsylvania district, I want to talk about how that was handled. Do you understand what time period I'm talking about? Not peak, when Holtwood became part of Amazon delivery?
A. Can you give me a date?
Q. March of 2017 until the next holiday season began in the subsequent November?
A. Yes.
Q. In that time period, March of 2017 until November 2017, that's the time period we're talking about.

The way it worked during this non-peak season
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    was that Lancaster annex was considered a hub?
    A. Correct.
Q. A variety of other smaller post offices that were somewhere near Lancaster, were the spokes in the wheel of which Lancaster was the hub, correct?
A. That's my understanding.
Q. And a schedule was created by management in the Lancaster annex, and that schedule told all of the carriers when they were obligated to report to Lancaster to deliver Amazon packages; is that correct?

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A. That's my understanding.
Q. We're going to look at them in a little more detail, but the way the schedule looked, there was a list of associate rural carriers, or ARCs, correct?
A. I've heard that explained that way this week in testimony. I very rarely ever got to see a copy of the schedule because Brian kept it on his computer, and he told me you're on the schedule, and that's as much as I got.
Q. But you have seen them this week, right?
A. I don't think I did. I was an observer this week. I wasn't shown the exhibits.
Q. Your attorneys didn't let you see the

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exhibits?
A. I never asked for them.
Q. We'll take a look at them. Let me mark one a little early. Actually, I don't want to mark one early because I don't want to go out of order.

Let me just walk you through the process and we'll circle back to some of these questions. So everyone who was scheduled to deliver packages who was working at one of the post offices that were spokes of the wheel to Lancaster during the non-peak season in 2017, which is March 2017 until sometime in November of 2017, if they were scheduled to work, they reported to Lancaster on Sunday?

MR. CROSSETT: Object to the form.
THE WITNESS: They were expected to report. BY MS. FINKELSTEIN:
Q. And when they reported on Sunday, there was a supervisor in the Lancaster annex who would assign out delivery to all of employees who reported there on that Sunday to deliver the packages?
A. That was my experience when I worked on holidays.
Q. Holidays were handled the same way during this time period, March 2017 until sometime in November 2017?

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A. I can't speak to whether they were the same as Sundays because I wasn't there on a Sunday.
Q. But I'm just asking for your understanding of how it was supposed to work during non-peak season.
A. I assume that to be true.
Q. And so during non-peak season, employees were working at all of these spoke offices and were delivering packages, but they weren't delivering them out of their own home offices on Sundays?
A. If I can repeat back to you the best I can. On Sunday -- I can only speak for holidays. But if it's the same thing on Sundays. They would go to Lancaster. Someone, like, from the spoke offices go to Lancaster, they would be assigned a route. Very rarely was it a route they were familiar with, like, for me, in Holtwood, I was sent off into other towns that I had never been to and would deliver those parcels on behalf of Lancaster.
Q. And that's how it worked during the non-peak time of the year?
A. Correct.
Q. During the peak time of the year there was still Amazon Sunday delivery but the hub was what's known as collapsed; that's what they called it?
A. In 2017 that would be true.
Q. So from sometime in November 2017 until
the first or second week of January 2018, the hub was collapsed?
A. Correct.
Q. Instead of reporting to Lancaster to deliver packages on Sundays and holidays, each individual post office that previously had been the spokes to the hub of Lancaster delivered their own packages, correct?
A. Correct. Holtwood delivered its own.
Q. Quarryville delivered its own, Peach Bottom delivered its own, every one of those smaller offices delivered its own packages?
A. For peak season.
Q. With its own staff?
A. Yes.
Q. Now, if we look at this union agreement, which is marked as Exhibit 18, reading the agreement, it says that there's going to be a list created, correct, of all of the employees who are going to deliver on Amazon Sundays?
A. You are looking at paragraph three?
Q. The first paragraph, in order to have sufficient rural carrier leave replacements available?

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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.
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the e-mails or include you in the phone calls?
A. No. Never.
Q. Do you have any reason to doubt that he
sent e-mails or made phone calls trying to find coverage
for you?
A. I would doubt it to the extent that I
have no experience about what he did or did not do,
because I never heard the phone call or saw an e-mail.
Q. So you don't know whether he made phone
calls or sent e-mails?
A. I know that he said that he did.
Q. Sometimes he found coverage for you,
right?
A. During the non-peak season of 2018, he
did find -- on two occasions he found a rural carrier
associate who was willing to work on Sunday.
Q. On at least two occasions he must have
made some form of contact to find you that coverage?
A. I assume so.
Q. You didn't participate in telephone
calls or get copied on e-mails when other people looked
for coverage for you, did you?
A. Who do you mean by other people?
Q. Anybody else.
A. I wasn't aware that anyone else was

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involved.
Q. So because you didn't work on Sundays, do you know what happened on Sundays that you were scheduled that you did not work?
A. All \(I\) can speak to is hearsay of what after two-and-a-half years of it being implemented from March 2017 onward, what happened typically up there.
Q. But you don't have any personal knowledge?
A. I was never there on a Sunday.
Q. You don't know who delivered the packages that were going to be assigned for you?
A. No. I wouldn't know that.
Q. You don't know how long that rural carrier associate had to work that day to deliver both the packages that were originally going to be assigned to that rural carrier associate and the packages that had been planned on being assigned to you?

MR. CROSSETT: Object to the form.
THE WITNESS: I was not there so I can't give specific information. BY MS. FINKELSTEIN:
Q. You don't know how hard it made the job of delivering packages for the other rural carriers who did report on Sundays when you were scheduled?

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A. I can't speak to their feelings.
Q. You don't know how dark it was when these carriers finished delivering packages?
A. I wasn't there.
Q. So you don't know?
A. No, I don't.
Q. You don't know whether the supervisor had to split routes because you didn't come in on a Sunday when you were scheduled?
A. I don't know.
Q. You don't know whether other employees who were scheduled on a Sunday when you were scheduled, who did report, commented negatively or reacted negatively when your name was called for attendance and you weren't there?
A. I can only speak to the hearsay.
Q. And you weren't there to hear their reactions?
A. Correct.
Q. You don't know whether it made the job more difficult in creating the schedule in advance that you were not coming on Sundays?

MR. CROSSETT: Object to the form.
THE WITNESS: I had nothing to do with the scheduling, so \(I\) couldn't know that.

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BY MS. FINKELSTEIN:
Q. You don't know whether it made the supervisor's job harder the day of on Sundays when they would call attendance and you weren't there and she would have to make a decision based on the people there as to how to get all of the work done?
A. I don't know what went through the supervisor's mind at the time.
Q. You don't know whether the fact that you being scheduled on Sundays but that you didn't report on Sundays caused employees to complain?
A. I can only speak to hearsay as far as what happened on a Sunday or not.
Q. You don't know whether the fact that you were not reporting on Sundays caused other employees to quit?
A. I don't know why someone would quit. That's their decision.
Q. Because you don't know anybody else's thought processes or motivations?

MR. CROSSETT: Object to the form.
THE WITNESS: I couldn't possibly know what brought someone to the point that they decided to quit their job exactly. BY MS. FINKELSTEIN:

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Q. I want to talk about the chronology. I'm going to show you a series of e-mails, starting with Exhibit 19 which is bates United States Postal Service 1520 down at the bottom through 1521.
(Exhibit No. 19 marked.) BY MS. FINKELSTEIN:
Q. Is it true that Holtwood became a spoke office of the Lancaster annex to deliver Amazon packages in March of 2017?
A. That's my experience.
Q. And the first schedule was created on March 13th, 2017?
A. I wouldn't know an exact date without seeing it.
Q. If you take a look at this e-mail, it's the bottom e-mail dated March 13, 2017, and it is attaching the subject is Sunday Amazon schedule, 3/19/2017.

Does that help you make sense of whether or not the first Amazon schedule, of which one of your post offices was going to be involved in 2017, was for Sunday March 19th, 2017?
A. I see March 13th.
Q. Look at the subject line, Sunday Amazon schedule March 19, 2017?
A. I can't speak as to whether this is the exact first time that \(I\) was scheduled. I see here that it says that I am scheduled for Sunday that date.
Q. Okay. And this was during a non-peak time period, March 2017?
A. True.
Q. I'm going to show you what I'm marking as Exhibit 20.
(Exhibit No. 20 marked.)
MS. FINKELSTEIN: It's USPS 1524 through 1525.
BY MS. FINKELSTEIN:
Q. Did you have a discussion with Mr. Hess about the fact that you had been scheduled?
A. With?
Q. Mr. Hess, Postmaster Hess?
A. I think I explained earlier, I tried to, that everything we did at that point was a discussion verbally with Brian Hess and myself. So to answer your question, he would have come to me and told me I was scheduled on Sunday, whether it was that Sunday or whatever, and I would have told him my reason for not reporting.
Q. You told him that you weren't going to work on Sundays because of your faith?
A. Yes. Because of my conviction to not
work on Sundays.
Q. That you were going to resign if you were forced to work Sundays?
A. Initially I considered doing that.
Q. Mr. Hess communicated to you that you were a valued employee and he didn't want to lose you?
A. He communicated to whoever this e-mail was addressed to. I'm looking at your Exhibit 19, and I believe you said here in the second paragraph he's writing to Doug French and all of these other people, and he said he didn't want to lose me as one of his best rural carriers.
Q. Had he communicated that to you, that you were a good employee and he didn't want to lose you?
A. I don't know if he communicated it to me at that time, but he said it to me in my career.
Q. In this time period had he treated you like a valued employee?
A. I wouldn't say that Brian went out of his way to make us feel valued. That's not the experience that I had with the Post Office.
Q. You said us?
A. Being his staff, including the full-timers.
Q. At some point did you change your mind
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?

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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?

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A. Yes.
Q. And a union representative was there?
A. Yes.
Q. During that pre-disciplinary interview Mr. Zehring suggested that the Postal Service would be willing to accommodate you by allowing you to come in late on Sundays after you had attended church?

MR. CROSSETT: Object to the form. Object to the extent that it calls for a legal conclusion.

THE WITNESS: I don't remember that offer being made. BY MS. FINKELSTEIN:
Q. Do you remember that offer being made at some point?
A. I believe many months later that Brian Hess told me that that option was always available to me, but I don't remember a particular time that anyone formally offered it to me until then.
Q. What do you mean by formally offered it to you?
A. Well, for example in this same PDI, Aaron seem to casually say to me, would you be willing to work, take another day during the week as a reasonable accommodation. And I don't consider that a formal offer. It was a conversation. And I explained

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Q. It's USPS 1684 through 1685. At the top, an e-mail from Mr. Hess to Chrissy Miller. That's your union rep, correct?
A. It was at the time.
Q. And if you look at the last paragraph of the e-mail, it says in the last sentence, \(I\) have always informed my rural carrier's hub office I would work with them to come in after their religious services.

My question is, in the time period, in June of 2017, by that time had Mr. Hess communicated to you that you could come in later on a Sunday after religious services if you wanted to?
A. I believe I said in one of my earlier answers that at some point Brian did tell me that that was an option, although I don't believe I heard that at the beginning. And it's possible that because he says it here, that that was the time that he did say that.
Q. But at some point that was communicated to you even if you can't put your finger on the exact date?
A. At some point Brian did suggest that I could come in after church.
Q. I'm going to show you Exhibit 27 USPS 1634.

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(A recess was taken from 3:02 p.m. to 3:14
p.m.)
(Exhibit No. 27 marked.)
MS. FINKELSTEIN: We have a stipulation between counsel that the following list is a list of Sundays that Mr. Groff was scheduled and did not attend. It is not exhaustive. The dates are March 19, April 2nd, April 16, April 23rd, May 7th, May 21st, June 11th, July 2, July 23rd, August 6th, August 28th, September 17th, October 1st, October 15th, December 3rd, and December 17th of 2017, as well as in 2018, January 14th, March 4th, March 18th, March 25th, April 1st, April 8th, April 22nd and May 13th of 2018.

MR. CROSSETT: This stipulation is predicated upon counsel's representation that there's documentary evidence in the documents produced that support each one of these dates.

MS. FINKELSTEIN: I have a good faith basis for each of these days, and could give you a bates number. Many of them are Mr. Groff's dates; not all of them. Some are schedules.

MR. CROSSETT: Then it is so stipulated. BY MS. FINKELSTEIN:
Q. So with that understanding of the dates that you were scheduled and did not work, I want to skip

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A. Okay.
Q. By that time you actually missed five scheduled shifts, not just three?
A. Agreed.
Q. So you didn't get a letter of warning until several months after, under the harshest imposition of sanctions, you could have been issued -I'll withdraw.

You didn't receive a letter of warning until June of 2017 even though you had missed three scheduled shifts in April of 2017?
A. That is true.
Q. So you would agree with me the Postal Service didn't discipline you or issue a letter of warning immediately after you missed one scheduled Sunday, correct?
A. I agree.
Q. And they didn't discipline or issue a letter of warning after you missed two scheduled Sundays?
A. True.
Q. Or three?
A. True.
Q. Or four?
A. True.

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Q. Only after you missed five?
A. Apparently.
Q. If someone is out to get you wouldn't you have expected them to issue a letter of warning as quickly as they could have under the policies?

MR. CROSSETT: Object to the form to the extent it calls for a legal conclusion.

THE WITNESS: I can't say. BY MS. FINKELSTEIN:
Q. Did Mr. Hess at some point tell you that he was setting up a meeting with someone from labor relations to discuss what reasonable accommodations could be given to you?
A. Much later than this June 9th, 2017 that we're talking about earlier. I believe it was in 2018 even, he told me that he had scheduled a telephone conference with Lyle Gains in labor relations. I was at work that day so \(I\) went out on a route and came back to the telephone.
Q. Did you understand that you could grieve the letter of warning that you received, that we've marked as Exhibit 29, to the union?
A. I did.
Q. But you chose not to grieve the letter of warning?
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to termination at that point.
BY MS. FINKELSTEIN:

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Q. That never happened though?
A. It didn't in practice, but I operated from that moment onward as if my understanding was that day could be the day.
Q. Okay. So the sort of escalating series
of corrective actions, the first step is a letter of
warning, correct?
A. Typically.
Q. Then a seven-day suspension, correct?
A. Yes.
Q. It can be paper suspension or actual suspension?
A. Yes.
Q. Paper suspension means you still can work and you still get paid, correct?
A. Yes. But it has the same weight as a real suspension.
Q. A real suspension means that for seven days you can't get scheduled and you can't work.
A. Understood.
Q. And then the next step is 14-day suspension, correct?
A. For myself it was.
Q. It could be a paper suspension or non-paper suspension?
A. Agreed.
Q. And only that after there's been a letter of warning, a seven-day suspension, 14 days suspension is removal considered, correct?

MR. CROSSETT: Object to the form.
THE WITNESS: That's -- I believe postal
policy, I'm trying to tell you, that they were -- Brian suggested to me shortly around the time of the letter of warning, that the Postal Service had every intention of skipping that process and going directly to termination very quickly.

BY MS. FINKELSTEIN:
Q. Let's play out how it actually happened. You got the letter of warning on May 9th?
A. I think it was June.
Q. June 9th, 2017. That was the date of the letter of warning, correct?
A. Yes.
Q. You then missed July 11th, another day, correct?
A. Anything you guys agreed to I'm going to agree with.
Q. July 2nd, a second day, July 23rd, a
Q. Yes.
A. I was employed from October 2017 onward with my father.
Q. So that would include November of 2017?
A. Yes.
Q. So at that time period you were working for both the Postal Service and for your father's company, Stone Ridge?
A. Yes.
Q. Now, as I understand it, in November of 2017, there was an issue when Mr. Hess gave you a photographic badge and you felt that Mr. Hess was teasing you when he was giving you the badge; is that correct?

MR. CROSSETT: Object to the form. You can answer.

THE WITNESS: I wouldn't characterize it as teasing. I would characterize it as slander. BY MS. FINKELSTEIN:
Q. Why do you use that term?
A. Because I believe it was an attempt to character assassination.
Q. Tell me what happened with the situation.
A. To the best of my recollection, Mr.

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Hess gave me my new badge. And in front of all of my co-workers on the workroom floor, which included two women that day, he made a comment about the picture, my picture, reminding him of the guys on the front of that morning's newspaper who had been arrested for sexual deviance in a local park. And I did not understand why he said that, but because it was such an inflammatory comment, \(I\) perceived it to be -- an attempt to assassinate my character publicly, because I understood at that point that he was angry with me for failing to comply with Sunday work.
Q. Did you ever report this incident to anybody?
A. I didn't feel I had to report it to anyone in Holtwood because everyone was there and witnessed it, the people who were there.
Q. Did you report it to anybody outside of Holtwood?
A. He included it in my EEO complaint at some point. I reported it to my attorney. I would have spoken about it to my family, of course. I don't recall anyone else.
Q. Did you report it to anybody in management?
A. I don't really -- I'm not aware of

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anyone else that I could have reported it to Brian
because Brian is my manager.
Q. Who's Brian's manager?
A. That changes all the time.
Q. What's the title of the person who's his manager?
A. The POOM.
Q. Did you report the comment that Mr. Hess made to the acting post office operations manager?
A. I have no way of -- I had no contact information or no knowledge who the POOM was until I saw my disciplinary paperwork had been currently signed by them. So when I filled out my EEO paperwork, it asked who else was involved. I had to leave it blank because I don't know anything about the POOMs, so I could not contact them.
Q. By this point you already received the letter of warning. Did you report this comment to anybody on the letter of warning?
A. No.
Q. I'm going to show you Exhibit 36.
(Exhibit No. 36 marked.)
MR. CROSSETT: I thought you mentioned a date for the badge on the record.

MS. FINKELSTEIN: November 2017.

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BY MS. FINKELSTEIN:
Q. This is a letter from your attorneys to the Postal Service. It was after the initial EEO complaint was filed. It mentions pre-disciplinary interviews on April 5th, May 10th, July 3rd, August 9th, and October 3rd, as well as the letter of warning on June 9th, 2017.

Do you think that by November 13, 2017 you had reported to your attorneys about this incident with the badge?

MR. CROSSETT: Objection. You're asking him
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    to --
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BY MS. FINKELSTEIN:
Q. By November 13th, 2017 had you told your attorney about the incident with the badge?
A. I can't recall that.
Q. If you had told them by that time would you have expected the issue with the badge to be something that they would be notifying the Postal Service about?

MR. CROSSETT: Object to the form.
THE WITNESS: I trust their judgment. I don't know what would be done. BY MS. FINKELSTEIN:
Q. Did you tell Mr. Hess that you didn't

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appreciate him making the comment about the badge?
A. No. I was so hurt by what he said that I feared my reaction would be inappropriate. So I held my tongue and I didn't say anything.
Q. Do the employees at the Holtwood Post Office sometimes tease each other and make jokes?
A. Nothing like that.
Q. But did they sometimes tease each other and make jokes?
A. There was a light atmosphere in the post office, but nothing even close to that was ever said before. It was definitely an angry comment made.
Q. Did you at one time photocopy a photograph of one of your employees and put it up as a joke?
A. I had a fellow employee that I did that with, but that was different.
Q. Why was that different?
A. Because it was light-hearted and she laughed. And she knew I was going to do it. She submitted to me taking the picture and understood that I was going to make a joke with it. And it was done at other times with other people.
Q. So more than once at the Holtwood Post Office there was joking done involving an employee's

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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?

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from the church?

MR. CROSSETT: Object to the form.
THE WITNESS: I'm saying that what I believe is my conviction. It may also be my church's position. It's not dependent on my church's position. BY MS. FINKELSTEIN:
Q. Okay. And then in January of 2018, in the first or second week of January of 2018, again, delivery began for the non-peak season, which is out of the Lancaster annex rather than out of Holtwood, correct?
A. That sounds right.
Q. By that time, there were only two rural carrier associates assigned to Holtwood because Sheila Moyer had injured herself. She was out on sick leave, correct?
A. Yes. She may still have been on the record. She just wasn't working.
Q. She was unable to work?
A. Yes.
Q. She twisted her ankle delivering mail?
A. Correct.
Q. And that's one of the hazards of being a rural carrier?
A. You're telling me.

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Q. Packages require you to get out of the car and walk to somebody's porch and leave the package there, right?
A. Yes.
Q. When it's dark or you're in an unfamiliar area, that can be kind of dangerous if you have to walk in the dark to deliver a package?
A. That can happen.
Q. You have to get out of the car in the dark; that can be dangerous too?
A. Correct.
Q. I'm going to show you Exhibit 40 .
(Exhibit No. 40 marked.)
BY MS. FINKELSTEIN:
Q. It's bates labeled 1955 through 1960.

On January 23rd, 2018, you filed a second --
you made a second contact with an EEO counselor,
correct?
A. Yes.
Q. And this time, if you look at the second page, as the responsible official you named Brian Hess and Keith Krempa; is that correct?
A. Yes.
Q. And the corrective action that you were seeking counseling for in this the second counseling

BY MS. FINKELSTEIN:
Q. It's a letter from you dated March 6th, 2018. Did you ask to be given a lateral transfer from being a rural carrier associate to another position with the Postal Service that did not require work on Sundays?
A. Yes.
Q. Was that the first time you had asked for a lateral transfer?
A. As a form of reasonable accommodation in regards to this Amazon Sunday delivery, I had transferred to different offices before.
Q. But in regards to the situation with working on Sundays, was this the first time you asked for a lateral transfer?
A. Yes.
Q. Did you have a particular position in mind that you thought you would be able to transfer to?
A. I didn't.
Q. Do you know of any lateral positions at the Postal Service that do not require work on Sundays?
A. I was hoping that a position could be created to accommodate that.
Q. That's not what you requested in this letter, is it? Did you say, I would like you to create a position for me that doesn't involve Sunday work?

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MR. CROSSETT: Objection. It speaks for
itself.
THE WITNESS: I agree I was asking for a transfer. That was management's decision. BY MS. FINKELSTEIN:
Q. Do you understand that all existing non-career lateral positions do require Sunday work?

MR. CROSSETT: Object to the form. You can answer.

THE WITNESS: I understand that the positions that are available right now typically require Sunday work.

MS. FINKELSTEIN: I'm going to show you
Exhibit 43.
(Exhibit No. 43 marked.)
BY MS. FINKELSTEIN:
Q. It's bates numbered USPS 2093.

It's an invitation for a conference call from Mr. Gains to Mr. Hess about Groff's religious reasonable accommodation. Did you ultimately have a telephone call with Mr. Gains and Mr. Hess to discuss your request for a religious reasonable accommodation in March of 2018?
A. Yes.
Q. Was Mr. Broadbeck also on the call?
A. No. It was only the three of us.

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was injured before she ever did cover a Sunday.
Q. So someone must have reached out to her and asked her to cover your shifts, right?
A. I asked her if she would be willing and she told me she would. Brian was there when this happened.
Q. Was he agreeable to her covering your shifts?
A. I'm not sure.
Q. Did he say no?
A. I don't remember what he said, because that conversation happened with Sheila later. I wasn't there when he spoke with her after that.
Q. But when the three of you were discussing it, did he say no at that point?
A. He didn't say anything.
Q. And Justin Tekely covered your shift sometimes, correct?
A. I saw that. I saw the schedule that Brian had made. I saw the Sundays that I was scheduled, but I don't -- because I wasn't there on the Sunday, I don't know how the work got done.
Q. But there were Sundays that you saw your name was on the schedule and you did not get notified that you had an unexcused absence, correct?

Q. One day, as you mentioned, Brian even

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delivered packages so that you wouldn't have to work on a Sunday?
A. I understand that now, yes.
Q. Even though that violated the union agreement?

MR. CROSSETT: Object to the form.
THE WITNESS: I'm not sure if that would or not.

BY MS. FINKELSTEIN:
Q. You were a carrier, correct?
A. I was. But I think we established today that I'm familiar with the contract.
Q. You know that Brian Hess at the time, he was the postmaster; he was not a carrier?
A. He was not a carrier. But my
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understanding is ultimately the postmaster is

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responsible to get the mail to the route.
Q. Lori Lewis from Paradise covered at
least one of your Sunday shifts, correct?
    A. I know there was an RCA, but I don't
remember the name.
Q. She came because Mr. Hess reached out to her?
A. That's what he told me.
Q. I want to show you what I'm marking

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Q. He let you fill out your EEO complaint at home. He let you tell him how long you spent doing it, and he paid you for the time you spent doing it, trusting your estimation of how long it had taken?
A. That sounds correct. I was not scheduled that day. And that office is very small. I would have to use his computer. So I requested to work at home.
Q. And he let you?
A. Yes, he did.
Q. Turn to page 866 at the bottom. Brian told you you're scheduled for Amazon on the Sunday that follows June 27th, 2018, but another rural carrier volunteered to cover for you, correct?
A. Yes.
Q. If you continue to the next page, you asked whether it was Justin, and he said, no Lori from Paradise.
A. I didn't dispute anything.
Q. He was definitely calling other carriers trying to find coverage for you on Sunday.
A. It would seem so.
Q. There's a text at the bottom of the page about a cold treat on July 2nd of 2018.

What's that about?

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Q. Do you, sitting here now, intend to complete that education?
A. I could. I don't know.
Q. Do you know whether other employees were disciplined for failing to report to work as scheduled on Sunday?
A. Yes.
Q. Do you know that some of them were
terminated for not reporting to work on Sunday?
A. Sorry?
Q. Do you know that at least one employee was terminated for failing to report to work on Sundays?
A. I wasn't aware of that.
Q. Do you know that people were irritated because they felt as though you were not following protocol?
A. I can't speak to other people's emotions.
Q. So you didn't know that?
A. All \(I\) can speak to is hearsay.
Q. It's funny because you love reporting hearsay back to me when you talk about Mr. Hess, but the question is not hearsay. It's about what you know.

Did you know that other people were irritated because they felt you weren't following protocol?

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MR. CROSSETT: Object to the form. You can answer.

THE WITNESS: Are you talking about a time frame here or just in general? BY MS. FINKELSTEIN:
Q. The entirety of your employment.
A. By the time in 2018 before I left, I was aware that people were unhappy, generally speaking. I don't know any specifics.
Q. Did you ever, when you would come in on Mondays, talk with Jeff Haddon and Roger Smith?
A. Do I remember when I came in talking to them?
Q. Yes.
A. Yes.
Q. Sometimes on Monday you asked them if they watched the Nascar race that previous Sunday?
A. Yes.
Q. Because you had watched the Nascar race that previous Sunday?
A. Yes.
Q. That doesn't violate the day of rest, watching Nascar?
A. No. Because for me, that's a way for me to spend time with my father, which I consider

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that he was a Bible believing Christian saved by grace.
Q. Do you know what religion Ms. Evans is?
A. I don't remember what she said.
Q. Do you know what religion Mr. Zehring
is?
A. I think he was Christian.
Q. Do you know what religion Mr. French
is?
A. I think he said no religion.
Q. Do you know what religion Mr. Gains is?
A. No. He did testify that he was a

Christian in his deposition.
Q. More than just a Christian; he's an ordained minister.

MR. CROSSETT: Object to the form.
THE WITNESS: I believe he did say that. BY MS. FINKELSTEIN:
Q. Do you know what religion Mr. Krempa is?
A. No. I don't know him at all.
Q. No one in management ever made a negative comment to you about your religion while you were a Postal Service employee, correct?

MR. CROSSETT: Object to the form.
THE WITNESS: I'm not sure \(I\) remember one at

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this time.
BY MS. FINKELSTEIN:
Q. You never heard anybody in management say to you that they were going to get you?
A. I heard it this week in testimony, but directly, no.
Q. That testimony was from Mr. Sheddy, correct?
A. I believe so.
Q. Who couldn't identify the person that made that comment?

MR. CROSSETT: Object to the form and characterization of the testimony.

THE WITNESS: I didn't remember at that time. BY MS. FINKELSTEIN:
Q. No one from the union ever said to you that they were going to get you?
A. My union representative, Chrissy Miller, after one of my PDIs told me that she had researched religious accommodation cases with the Postal Service and she told me that 99.99 percent -- I'm attempting to recall what she said approximately. But something to the nature of 99.99 percent of these cases don't win, so you might as well give up now.
Q. But she never said to you that she was

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1 after a holiday. And normally on that day, Jeff would
2 be there and Roger Smith, the other two regular
3 carriers, because I was there for Mary. And I would say
4 almost every week Brian would allow them to curtail

There was another time that there was a snowstorm. I believe this was in 2018, but I'm not sure. It was a very bad storm. There was a lot of accidents that day. I saw a lot people in the ditch in

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the Holtwood delivery area. And there was a lot of reports of accidents. And I had gone out and safely delivered the route I was assigned to. When I got back, Brian ordered me to go out and help Valerie at risk to myself. And I came back and it was dark, and Brian ordered me out again to go help Mary and get her mail and pick up a bunch of packages and try to get back.

And I remember that during the time that I was ordered back to the street, I nearly had accidents more than once. And I felt my safety was at question as a direct result of his order. The way he did it made me feel that it was intentional.
Q. I think you told me earlier that the postmaster, in your opinion, has significant discretion in terms of managing the work of the post office.

Is that a fair characterization of what you said earlier?

MR. CROSSETT: Object to the form.
THE WITNESS: I was speaking in terms of how they would implement the schedule or discipline. BY MS. FINKELSTEIN:
Q. You don't think that the postmaster also had discretion to decide whether or not to allow a carrier to curtail mail or whether to allow a carrier to assist another carrier in getting mail delivered?

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A. I can't speak to that. I would say that, to me, it felt like the treatment that one person was allowed to do something and I wasn't was on a consistent basis. It was week after week, to the point that the other employees were coming to me and saying, I can't believe Brian is doing this to you. This is very wrong.
Q. What other employees?
A. Roger Smith, Jeff Haddon and Gini

Serball.
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    Q. You're friends with Gini Serball? Are
    you friends with her?
A. I know her.
Q. It lists her as a reference on your job
application.
A. That's because she was willing to.
Q. You don't think that there were times
when other employees had to go out in bad weather to
deliver mail?
A. It's the nature of the post office, but
not the nature to be sent out three times in one day
when your work is complete.
Q. You were a relief carrier when you
worked there, correct?
A. Yes.

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Q. Your job was to fill in where the full-time career carriers were not able to complete their work?
A. Please understand on that day I had filled in for the carrier that was out that day. Those duties were added to my expected work.
Q. Did you complain to anyone in management about any of those incidents we just talked about, the not being allowed to curtail mail and the time you had to go out in an ice storm and the time you had to go out in a snowstorm?
A. I don't remember any particular instance of doing that.
Q. Did you explain to the union about any of these incidents?
A. No.
Q. Did you complain to anybody who wasn't a carrier about any of these incidents?
A. Most likely, meaning my family.
Q. Anybody at the post office who wasn't a carrier?
A. I know a lot of people at the post office. Did you mean complaining to a clerk and not a carrier?
Q. Yes.

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that position would be mine.
Q. By the time you left the Postal Service you had not yet been given a position where you were eligible for a pension or a 401K, correct?
A. Correct.
Q. And I think one of the things you told me the very beginning of the deposition was that you viewed doing the Lord's work as being more important than earning money. Is that still true as of the time you separated from the Postal Service?

MR. CROSSETT: Object to the form. You can answer.

THE WITNESS: I saw that I can do the Lord's work at the Post Office because, for me, wherever I am, I try to be an example of Christ and try to help people and share -- live my faith in the workplace as well. BY MS. FINKELSTEIN:
Q. You couldn't do that and also work on Sundays?
A. I would -- I do not want to work on Sundays.
Q. Prior to joining the Postal Service you had long stretches where you didn't have any paid employment at all.

What changed that made the Postal Service job

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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?
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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

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until I was no longer able to work there.
Q. That didn't give you any solace, that if you were terminated, it would be because that was part of the plan?
A. Not the way it happened.
Q. Why not?
A. Because -- I'm not sure.
Q. Did you go seek any counseling from anybody other than from a medical professional?
A. No.
Q. So how did all of these conditions resolve?
A. They're not. I should add that because I -- this is another kind of thing you don't enjoy to admit, but because of my anxiety, because of the fear, it caused me to have moments where I considered taking my life. They were only thoughts. I never bought a gun. I never took any medicine, but I was that despondent at times that \(I\) thought I cannot believe that the Postal Service was doing this to me.
Q. You still haven't sought any treatment from anyone, medical or otherwise?
A. I would never take my own life because of my faith, but I'm admitting to the fact that I had thoughts.

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At least he laughed. I assumed he liked it. And then later it became, like, an office joke. They eventually took Gini's picture down and put up -- they how found a picture of another employee and put it up with a new quip. It became a joke. BY MR. CROSSETT:
Q. Did Gini laugh when she saw it?
A. Yes.
Q. Was the comment offensive or in any way putting someone down?

MS. FINKELSTEIN: Objection.
THE WITNESS: No. I think what happened was that Gini had to help deliver one day. It was some kind of quip like that; \(I\) can deliver the mail too, or something like that. It was just something light-hearted. BY MR. CROSSETT:
Q. Were there any situations where Mr. Hess -- any other situations that you believed you were treated differently or wrongly by him after the Sunday issue arose?
A. I remember that there was an occasion where when I came back from the route he asked me to run an express. Because there was a time deadline on an express, either 12:00 or 3:00. And I ran the express

1 like he asked. It went to an Amish farm. When I got 2 there, it was quite a distance away, eight or nine miles. It took me some time to get there. When I got there I had to park the car and get out and go to the house and knock. No one answered.

So since I had come that far, I wanted to make my best effort to deliver because there was a signature required and it was an express. That's our highest class. You're supposed to treat it special. And so I saw there was a man in the barn. I assumed he lived there. And I had taken the time to walk out and find him. He was willing to sign it.

I went back and got in my car. And then as I started to leave, the farm lane was blocked by a team of about eight mules. And the guy was slowly moving up the whole line, blocking the entire driveway. I had to sit there and wait for a significant period of time. And I drove back to the post office to return the scanner. If I'm remembering correctly, I put down on the green timecard that \(I\) worked 20 minutes and that eight or nine miles that should have been reimbursed. And two weeks later when I got my paycheck, it had been docked down without explanation to five minutes, and the mileage.

And I took that in the context of the way that Brian had been treating me all along that he was docking
my pay because he was angry with me because \(I\) wouldn't comply with working on Sundays.
Q. Was there ever a situation where Mr.

Hess helped other individuals but wouldn't help you that you believed were evidence that you were treated differently because of your request for Sundays off?
A. Yes. I believe, to the best my recollection, Veteran's Day of 2017, it was when Sheila and Justin were employed at the Holtwood Post Office along with myself. It's one of the heaviest days of mailing parcels that I can remember. And I was overwhelmed. I've been doing this for a long time. For me to feel overwhelmed was impressive. I remember that Brian used his personal vehicle and kept taking load after load after load of Justin and Sheila's parcels and whatnot, but he never offered me any help that day. I worked past my evaluation. And, for example, I lost money. I worked for free after my evaluation expired that day. I was struck by the fact that they got help but I didn't. It's not how the Post Office is supposed to work.
Q. You worked past your evaluation; what do you mean?
A. The route \(I\) was on that day was route one. To my recollection it paid 8.2 hours per day. If

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THE WITNESS: I felt the ultimatum she gave me was to compromise my religious belief and my conscience to work on a Sunday for her or to find another job, which means I would have to leave the Post Office. BY MS. FINKELSTEIN:
Q. You believed that before you even transferred to Holtwood, correct?
A. Transferring to Holtwood was my solution.
Q. Turning back to my question, you believed that even before you transferred to Holtwood, that your job might be at risk?
A. I'm not sure I understand the question.
Q. From the point you had that conversation with Ms. Wright forward, didn't you tell David that you were terrified that you could be fired?

MR. CROSSETT: Object to the form. You can answer.

THE WITNESS: I was terrified of the dilemma that it put me in, to either lose my postal career or choose to compromise my faith. BY MS. FINKELSTEIN:
Q. You had that terrifying feeling even before you transferred to Holtwood, correct?
A. I had it in that moment.

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in the snowstorm, why don't you view that as doing a good job and making sure that the mail gets delivered and helping out other carriers?

MR. CROSSETT: Object to the form. You can answer.

THE WITNESS: I don't know. BY MS. FINKELSTEIN:
Q. Finishing the route on a day when other carriers curtail the mail, why isn't that you doing a good job, pleasing God, and making sure that your job is done properly?

MR. CROSSETT: Object to the form. You can answer.

THE WITNESS: I'm not sure. BY MS. FINKELSTEIN:
Q. So I want to talk about the examples of how you say Brian treated you differently that you didn't talk about when I asked you about it the first time.

He had you run an express mail package to an Amish facility and you say that your green card, the hours that were recorded in your green card, you weren't paid for them?
A. Yes.
Q. Did you tell Brian that you had hours

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missing from your pay card?
A. No.
Q. That wasn't the only time that you had hours missing, correct?
A. Most likely.
Q. That was the only time?
A. Are you talking about my entire career?
Q. Yes.
A. I'm sure there were other times.
Q. Were there times when you worked at Quarryville you had to follow up with Ms. Wright because she had shorted you time or incorrectly recorded your time, correct?
A. It's possible.
Q. In fact, it was not infrequent that somebody would get the time a little wrong and you would have it corrected?
A. The difference in this situation was that I thought that Brian hated me and I didn't want to approach him about it.
Q. Do you know if he even realized that your time was incorrect since you never brought it up to him?
A. He was the one that entered the numbers into the computer.
Q. It could have been even been a typo and he might not have realized it?
A. I don't know how you type 20 and five differently.
Q. You never raised it with him, right?
A. I didn't.
Q. You never complained to anybody else?
A. I may have complained to others. I don't remember.
Q. Did you ever complain to anybody in management?
A. I didn't feel that I had the opportunity to do so.
Q. Did you complain to your union
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representative?

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A. No.
Q. Do you know whether anybody else sometimes had the wrong time recorded for their work?
A. We're not supposed to look at each other's paychecks, so no.
Q. The Veteran's Day situation in 2017, I want to ask you about that.

At the time that this happened, you were the most experienced rural carrier in Holtwood?
A. By nature of my experience, yes.

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Q. Sheila and Justin were not long outside of their probation period when this happened?
A. Justin started in April 2017. And we're talking about November 2017. So I would say he was well trained on his route.
Q. But Sheila was relatively new at the time?
A. That's true.
Q. And if we look at the timecards, it actually shows that of the three rural carrier associates that worked that day, you went home the earliest.
A. Because I buckled down and worked really hard to get it done afraid \(I\) would not make it on time.
Q. If we look at the records, it actually
shows that you had the fewest total pieces of mail to
deliver as compared to Justin and Sheila?
A. I had the longest route. Mileage effects time, like volume.
Q. But Mr. Hess allegedly helping Sheila and Justin didn't get them out any earlier than you got out, did it?
A. That could be argued. I'm not sure. I don't know when they left that day.

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scheduled time for the route, correct?
A. But that day I didn't.
Q. But many other days you get done early and got to go home early and would get paid for the full 8.2 hours?
A. That's true.
Q. So the last topic I want to talk about was morale.

You relayed to David a personal relationship between Justin Tekely's wife and Mr. Hess's wife.

Justin left the Holtwood Post Office, didn't he?
A. In April 2018.
Q. He transferred to Strasburg?
A. Yes.
Q. So whatever personal relationship there was, it didn't cause Justin to be unwilling to leave the Holtwood Post Office, did it?
A. I don't know. I don't know much about it.
Q. And the December before you separated from the Postal Service, Mr. Hess had everybody from the Holtwood Post Office to his house for a Christmas party?

> A. I think that was the previous Christmas, 2017, when Justin and Sheila were still

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Q. And any of the incidents that we've talked about, was religion discussed as part of those incidents?
A. What incident?
Q. The day that you had to take the express mail to the Amish facility, was there any discussion of religion that day?
A. No.
Q. The Veteran's Day of 2017 where you felt very overwhelmed, was there any discussion of religion that day?
A. I don't recall.
Q. The ID badge incident in November of 2017, was there any discussion of religion that day?
A. When you say the day, we might have talked about religion. But are you speaking about that incident?
Q. As part of that incident.
A. I don't recall.
Q. The snowstorm where you had to go out, was there a discussion of religion as part of that incident?
A. No.
Q. The other storm where you came back several times and had to go out after dark, was there

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any discussion of religion as part of that incident?

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any discussion of religion as part of that incident?
    A. There was no discussion, but it was my
    A. There was no discussion, but it was my
understanding this was happening as a result of the
understanding this was happening as a result of the
Amazon Sunday situation.
Amazon Sunday situation.
    Q. But that was your perception, not based
    Q. But that was your perception, not based
on anything said to you?
on anything said to you?
    MR. CROSSETT: Objection to form.
    MR. CROSSETT: Objection to form.
    THE WITNESS: To me, it was pretty obvious
    THE WITNESS: To me, it was pretty obvious
what was going on.
what was going on.
BY MS. FINKELSTEIN:
BY MS. FINKELSTEIN:
    Q. Did anybody say that to you?
    Q. Did anybody say that to you?
    A. It didn't have to be said.
    A. It didn't have to be said.
    Q. But did anybody say that to you?
    Q. But did anybody say that to you?
    A. I think if you spoke to the other
    A. I think if you spoke to the other
employees they would say that Brian's behavior towards
employees they would say that Brian's behavior towards
me was because of wouldn't work on Sundays.
me was because of wouldn't work on Sundays.
    Q. But did anybody ever say that? Did
    Q. But did anybody ever say that? Did
Brian ever say to you, I'm treating you this way because
Brian ever say to you, I'm treating you this way because
of your religion?
of your religion?
    A. That statement was not made.
    A. That statement was not made.
    MS. FINKELSTEIN: That's all I have.
    MS. FINKELSTEIN: That's all I have.
    MR. CROSSETT: Nothing further.
    MR. CROSSETT: Nothing further.
    (The deposition concluded at 6:25 p.m.)
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    (The deposition concluded at 6:25 p.m.)
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\section*{IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA}
\begin{tabular}{lcl} 
GERALD E. GROFF, & \(:\) & \\
Plaintiff & \(\vdots\) & \\
& \(\vdots\). & \(\vdots\) \\
v. & \(\vdots\) & \\
MEGAN J. BRENNAN, 1879 \\
POSTMASTER GENERAL, UNITED & \(\vdots\) & \\
STATES POSTAL SERVICE, & \(\vdots\) & \\
Defendant., & \(:\) &
\end{tabular}

\section*{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.
3. List all of your employment since either your graduation from high school or the time you reached the age of 16 , whichever is earlier through the present time.

For each job, set forth your title, the date on which you started and left the position, your reason for leaving, your grade level and salary at which you were compensated, a summary of your duties and responsibilities, the hours you were scheduled or expected to work, the name of your immediate supervisor, all performance ratings for each year, and state whether you filed an EEO or other employment complaint, grievance or litigation relating to that employment. This request includes employment up until the time of answering these Interrogatories.

Please complete and sign the attached blank employment authorization form for each of your employers other than the United States

Postal Service, and return same with the documents requested herein. Interrogatory No. 3.

Plaintiff objects to this interrogatory on grounds that it is a compound question with many subparts, many of which are oppressive and burdensome, and unlikely to lead to the discovery of admissible evidence, including but not limited to requests for prior salary, all performance ratings, and the name of his immediate supervisor. With respect to the portion of this request seeking disclosure of prior EEO complaints or filings, Plaintiff objects that the request is overbroad and burdensome as to scope in time, and therefore, not calculated to lead to the discovery of admissible evidence. Plaintiff also objects that Defendant has not provided an employment authorization form, but in any event, is able to subpoena Plaintiff's prior employers and therefore equally able to obtain the desired information. As to requests seeking information pertaining to Plaintiff's employment by the Defendant USPS, Defendant is in possession of the same.

Employer: Willow Valley Manor Retirement Community
Dates of Employment (approximate): September 1994 to April 1997

Location: Willow Street, PA
Position: Foodservice Kitchen Prep Helper \& Server-Trainer
Schedule: Part-Time (Do Not Recall)
Reason for Leaving: Transferred Position Within Company
Employer: The Glen at Willow Valley Manor North Retirement Community
Dates of Employment (approximate): April 1997 to February 1999
Location: Willow Street, PA
Position: Recreational Therapy Assistant
Schedule: Part-Time (Do Not Recall)
Reason for Leaving: Resigned
March 1999 to May 2001 - Full-Time Student (Missions School \& Finishing College)
Employer: Penn State Cooperative Extension - Horticultural Department
Dates of Employment (approximate): June 2001 to October 2001
Location: Lancaster, PA
Position: Horticultural Research Assistant
Schedule: Mon-Fri (Full-Time)
Reason for Leaving: Temporary Position
Employer: Black Rock Camp \& Retreat Center - Outdoor Education Department
Dates of Employment (approximate): October 2001 to May 2002
Location: Quarryville, PA
Position: Outdoor Education Instructor
Schedule: Part-Time (Do Not Recall)
Reason for Leaving: Seasonal Work
Employer: English Language Institute China (ELIC) - Weinan Teachers College
Dates of Employment (approximate): August 2002 to June 2004
Location: Weinan Teachers College, Weinan, Shaanxi Province, People's Republic of China
Position: College-Level English Language Instructor
Schedule: Do Not Recall
Reason for Leaving: Contractual Term Completed
Employer: Sight \& Sound Ministries, Inc.
Dates of Employment (approximate): March 2007 to August 2007
Location: Strasburg, PA
Position: Stage Technician
Schedule: Tuesday thru Saturday (Full-Time) - Sunday \& Monday OFF
Reason for Leaving: Resigned
Employer: DOVE School of Global Transformation (Missions School)
Dates of Employment (approximate): September 2007 to March 2008
Location: Reading, PA

Position: Full-Time School Staff (Residential) - Volunteer Position (No Salary/Church
Supported); Missions Team Co-Leader - Staffed Team Training \& Overseas Outreach to
Thailand/Myanmar
Schedule: Residential Staff
Reason for Leaving: Term Completed
Employer: Sight \& Sound Ministries, Inc.
Dates of Employment (approximate): June 2008 to October 2009
Location: Strasburg, PA
Position: Lead Housekeeper
Schedule: Tuesday to Saturday (Full-Time)
Reason for Leaving: Department-Wide Layoff (Position Eliminated)
Employer: United States Postal Service
Dates of Employment (approximate): December 2010 to August 2011
Location: Quarryville, PA
Position: Temporary Rural Carrier (TRC)
Schedule: Part-Time (Do Not Recall)
Reason for Leaving: Resigned to enroll as full-time student in mission's school
Employer: United States Postal Service
Dates of Employment (approximate): April 2012 to January 19, 2019
Location: Quarryville, Paradise, \& Holtwood, PA Post Offices
Position: (started as TRC \& promoted to RCA)
***Temporary Rural Carrier (TRC) - (April 2012 to July 2012);
***Rural Carrier Associate (RCA) - (July 2012 to January 2019)
Schedule: Part-Time (Do Not Recall)
Reason for Leaving: Constructive Discharge - Forced to Resign Position Due to Ongoing Workplace Harassment \& Refusal by Employer to Honor Request for Religious Accommodation

Employer: Stoneridge Express, LLC
Dates of Employment (approximate): October 2017 to Present
Location: Holtwood, PA
Position: Office Manager
Salary: \(\$ 150\) per week, no benefits
Schedule: Part-Time (Do Not Recall)
Reason for Leaving: N/A (still currently employed)
Employer: Normandeau Associates, Inc.
Dates of Employment (approximate): April 2019 to Present
Location: Drumore, PA
Position: Biological Technician
Salary: \(\$ 12.00\) per hour, no benefits
Schedule: Part-Time (Do Not Recall)
Reason for Leaving: N/A (still currently employed)

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.

\section*{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.

\section*{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 (midNovember 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 PreDisciplinary 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 mentioned 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 Dad 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.

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\begin{tabular}{|c|c|c|c|c|c|}
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PS Form 50, January 2009 (Exception to Standard Form 50)

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PS Form 50, January 2009 (Exception to Standard Form 50)

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PS Form 50, January 2009 (Exception to Standard Form 50)

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PS Form 50, January 2009 (Exception to Standard Form 50)

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PS Form 50, January 2009 (Exception to Standard Form 50)

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PS Form 50, January 2009 (Exception to Standard Form 50)

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PS Form 50, January 2009 (Exception to Standard Form 50)

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PS Form 50, January 2009 (Exception to Standard Form 50)

UNITEDSTATES
POSTAL: SERVICE
Application for Employment
The US Postal Service is an Equal Opportunity Employer
SOS: \(\quad-1977\)


\begin{tabular}{l|l|l}
\begin{tabular}{l} 
1. Name (First, MI, Last) \\
Gerald E Groff
\end{tabular} & \begin{tabular}{l} 
2. Primary Phone
\end{tabular} & \begin{tabular}{l} 
3. Business Phone \\
N/A
\end{tabular} \\
\hline 4. Mailing Address (No., Strect, City, State, Zip Code) & \begin{tabular}{l} 
6. Preferred Phone \\
Primary Phone
\end{tabular} \\
\hline New Providence, PA, 17560 & 5. Mobilc Phone & \begin{tabular}{l} 
7. Place of Birth (City \& State or City \& Country) \\
Lancaster, PA
\end{tabular} \\
\hline \begin{tabular}{l} 
8. Position Applied For \\
TEMPORARY RELIEF CARRIER - 07 QUARRYVILLE PA \\
NB58391568 cxternal
\end{tabular} & \begin{tabular}{l} 
9. Job Posting \\
TEMPORARY RELIEF \\
CARRIER -07 \\
QUARRYVILLE PA
\end{tabular} & 10. E-Mail \\
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1. Are you a High School Graduate? Yes
2. Education Type: University

Education Level: Certificate
Educational Institution: Azusa Pacific University, 901 East Alosta Avenue, Azusa, California, USA
Field of Education: Education
Start Date: 06/01/2002 End Date: 02/01/2004
Highest Level Completed:
Subject: TESOL
Grade:
Description: Concurrent certification in Teaching English to Speakers of Other Languages (TESOL) during assignment in China with ELIC teaching program.

2a. Education Typc: University
Education Level: Bachelor's Degree
Educational Institution: Millersville University, PO Box 1002, 1 South George Street, Millersville, Pennsylvania, USA
Ficld of Education: Biological Studics
Start Datc: 08/01/1996 End Date: 05/01/2001
Highest Level Completed:
Subject:
Grade:
Description: Graduated with honors with B.S. degree in Biology

2b. Education Type: High School
Education Level: High School Graduate
Educational Institution: Lancaster Mennonite High School, 2176 Lincoln Hwy East, Lancaster, Pennsylvania, USA
Field of Education:
Start Date: 08/01/1994 End Date: 06/01/1996
Highest Level Completed:
Grade:
Subject:
Description:
3. Summary of Accomplishments:

Although I have included my work with both the DOVE School and in the People's Republic of China as an English Course Instructor (this position was unpaid voluntecr work) I have also completed five additional terms of voluntary service since high sehool graduation. These opportunities include three separate trips to Africa (Kenya \& South Africa) on behalf of my church and various Christian missions organizations to participate in a number of service opportunities in those nations. During college, 1 took a one year break to join Youth With A Mission's Discipleship Training School for three months of intensive training followed by a two month overseas outreach to Nepal and India. Our team was again involved in many service opportunities benefiting the people of those countries (construction, education, children's ministry, etc.) Finally, I also completed a term in rural Mexico working with an established missions-oriented school and ministry, which included outreach to poor indigenous tribegerdiqaleliniquprk, and visitation/education programs. I believe my career of voluntary service indicates a commitment to value people and treat them with respect that would prove beneficiary to any employeUSPSO0031

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Name ( First, MI, Last): Gcrald E Groff
Date: 09/12/2010


\section*{C.Wörkilistory}
(Start with your present position and go back for 7 years or to your 16th birthday, whichever is later. You may include voluntecr work. Account for periods of unemployment in separate blocks in order. Include military service.)

May we contact your present employer about your character, qualifications, and employment record?
YesA "No" will not affect your consideration for employment.
\begin{tabular}{|c|c|c|c|c|}
\hline \multirow[t]{2}{*}{} & Dates of Employment (Month \& Ycar) 10/2009 - Prcsent
\(\square\) & Grade If Postal, Federal Service or Military & & \\
\hline & Job Title
unemployed Average Hours per Weck & No. and Type of Employccs Supervised & Present Salary/Earnings N/A & \\
\hline \multicolumn{2}{|l|}{\multirow[t]{2}{*}{Name of Employer and Complete Mailin Unemployed N/A n/a, Pennsylvania, N/A, USA}} & Kind of Business (Manufacturing, etc.) & Current Employer? Yes & \\
\hline & & Name of Supervisor
\[
\mathrm{N} / \mathrm{A}
\] & Tclephonc Number N/A & \\
\hline
\end{tabular}

Reason for Wanting to Leave
Laid off due to economic cutbacks at company---entire department climinated October 2009
Description of Duties, Responsibilitics, and Accomplishments
\begin{tabular}{|c|c|c|c|}
\hline \multirow[t]{2}{*}{2.} & Dates of Employment (Month \& Year)
|06/2008-10/2009 & Grade If Postal, Federal Service or Military & \\
\hline & \begin{tabular}{l} 
Job Title \\
Lead Custodian
\end{tabular} Average Hours per Week & No. and Type of Employecs Supervised & Salary at Leaving
\[
22700
\] \\
\hline \multicolumn{2}{|l|}{\begin{tabular}{l}
Name of Employer and Complete Mailing Address Sight \& Sound Ministrics, Inc. \\
300 HARTMAN BRIDGE ROAD
\end{tabular}} & Kind of Business (Manufacturing, etc.) Facilitics & \\
\hline \multicolumn{2}{|l|}{\begin{tabular}{l}
PO BOX 310 \\
Strasburg, Pennsylvania, 17579, USA
\end{tabular}} & Name of Supervisor DAWN AREFORD & Telephone Number 717-687-4770 \\
\hline
\end{tabular}

Reason for Leaving
Laid off
Description of Dutics, Responsibilities, and Accomplishments
My role was essentially that of Assistant Manager for the department by covering for the Supervisor during absences and offering input/assistance on most departmental decisions, including discipline and daily task management. I was also responsible for a regular area of the building with duties including maintenance and clean-up of the facility after hours.
\begin{tabular}{l|l|l|l}
\hline 3. & \begin{tabular}{l} 
Dates of Employment (Month \& Year) \\
\(03 / 2008-06 / 2008\)
\end{tabular} & \begin{tabular}{l} 
Grade If Postal, Federal Scrvice or \\
Military
\end{tabular} & \\
& \begin{tabular}{l} 
Job Title \\
unemployed
\end{tabular} & Average Hours per Week
\end{tabular} No. and Type of Employecs Supervised \begin{tabular}{l} 
Salary at Leaving \\
N/A
\end{tabular}
\begin{tabular}{|c|c|c|c|}
\hline \multicolumn{4}{|l|}{C.Work History} \\
\hline \multicolumn{2}{|l|}{n/a, Pennsylvania, N/A, USA} & Name of Supervisor N/A & Telephone Number N/A \\
\hline \multicolumn{4}{|l|}{\multirow[t]{2}{*}{\begin{tabular}{l}
Reason for Leaving \\
Unemployed \\
Description of Dutics, Responsibilities, and Accomplishments \\
Unemployed from end of school term (March 2008) til found job at Sight \& Sound (June 2008)
\end{tabular}}} \\
\hline & & & \\
\hline \multirow[t]{2}{*}{} & Dates of Employment (Month \& Ycar) 08/2007-03/2008
\(\square\) & Grade If Postal, Federal Scrvice or Military & \\
\hline & \begin{tabular}{l}
\begin{tabular}{l} 
Job Title \\
Team Leader/Full-Time \\
Staff Position
\end{tabular} \\
\hline
\end{tabular} & No. and Type of Employecs Supervised & Salary at Leaving VOLUNTEER \\
\hline \multicolumn{2}{|l|}{Name of Employer and Complete Mailing Address DOVE School of Global Transformation 11 TOLL GATE ROAD} & Kind of Business (Manufacturing, etc.) & \\
\hline \multicolumn{2}{|l|}{Lititz, Pennsylvania, 17543, USA} & Name of Supervisor CHRIS RAINBOW & Telephone Number 1-800-848-5892 \\
\hline \multicolumn{4}{|l|}{Reason for Leaving Unemployed} \\
\hline \multicolumn{4}{|l|}{Full-time School Staff and Team Leader for Christian missions and training school for post-high students focused on mentoring and discipleship for youth from Christian perspective. My role included mentoring male students throughout seven-month school term, while also working with other staff to facilitate daily school activities and requirements (e.g. hosting speakers, food service, facilities, etc.) I was also the designated leader for the school's two month overseas outreach to the nations of Myanmar and Thailand.} \\
\hline
\end{tabular}
\begin{tabular}{l|l|l|l}
\hline 5. & \begin{tabular}{l} 
Dates of Employment (Month \& Year) \\
\(03 / 2007-08 / 2007\)
\end{tabular} & \begin{tabular}{l} 
Grade If Postal, Federal Scrvice or \\
Military
\end{tabular} & \\
& & Average Hours per Weck & No. and Type of Employecs Supervised \\
& \begin{tabular}{l} 
Job Title \\
Stage Technician/Deck \\
Crew
\end{tabular} & \begin{tabular}{l} 
Salary at Leaving \\
21600
\end{tabular} \\
\hline \begin{tabular}{l} 
Name of Employer and Complete Mailing Address \\
Sight \& Sound Ministrics, Inc.
\end{tabular} & Kind of Business (Manufacturing, etc.) & \\
\begin{tabular}{l} 
300 HARTMAN BRIDGE ROAD \\
PO BOX 310 \\
Strasburg, Pennsylvania, 17579, USA
\end{tabular} & \begin{tabular}{l} 
Name of Supervisor \\
JEFF NISSLY
\end{tabular} & \begin{tabular}{l} 
Telephone Number \\
\(717-687-4770\)
\end{tabular} \\
\hline
\end{tabular}

Reason for Leaving
Voluntarily resigned
Description of Duties, Responsibilities, and Accomplishments
My role was to provide technical support for the safe run of all show performance activities, including the safe
movement of set pieces, fly rigging, lift operation, performer safety, and accident prevention.
\begin{tabular}{|c|c|c|c|c|}
\hline \multicolumn{2}{|l|}{C. Work mistory} & & & \\
\hline \multirow[t]{2}{*}{} & \multicolumn{2}{|l|}{Dates of Employment (Month \& Year) 08/2004-03/2007} & Grade If Postal, Federal Service or Military & \\
\hline & Job Title unemployed & Average Hours per Week & No. and Type of Employecs Supervised & Salary at Leaving N/A \\
\hline \multicolumn{3}{|l|}{\multirow[t]{2}{*}{Name of Employer and Complete Mailing Address Unemployed N/A n/a, Pennsylvania, N/A, USA}} & Kind of Business (Manufacturing, etc.) & \\
\hline & & & Name of Supervisor N/A. & Telephone Number N/A \\
\hline
\end{tabular}

Reason for Leaving
Unemployed
Description of Duties, Responsibilities, and Accomplishments
- After returning from my term in the Pcople's Republic of China, I took an unpaid sabbatical to readjust to life in American culture \& pursuc non-teaching interests. During this period, I decided to extend this leave to care for a family member who required a series of medical procedures due to motor vehicle accident-related injuries since at that time I did not have as many personal or financial responsibilities as other family members.
\begin{tabular}{l|l|l|l}
\hline 7. & \begin{tabular}{l} 
Dates of Employment (Month \& Year) \\
08/2002-08/2004
\end{tabular} & \begin{tabular}{l} 
Grade If Postal, Federal Service or \\
Military
\end{tabular} & \\
\hline & \begin{tabular}{l} 
Job Title \\
Foreign Expert/College \\
Course Instructor \\
(English)
\end{tabular} & Average Hours per Week
\end{tabular} No. and Type of Employees Supervised \begin{tabular}{l} 
Salary at Leaving \\
VOLUNTEER
\end{tabular}

Rcason for Leaving
Voluntarily resigned
Description of Duties, Responsibilities, and Accomplishments
As a member of English Language Institute/China (ELIC) I worked at Weinan Teachers College in rural People's Republic of China teaching college-level English Education majors courses in Writing and Spoken English. My position was referred to as that of "Foreign Expert" by the Chinese government, although my role was that of college course instructor in the Foreign Language Department. I committed to a two-year term and resigned after completion to return to the USA.
D. Vecran Preference (Answer all parts. if a part does not apply, answer Now )
1. Have you cver served on active duty in the United States Armed forces? (Exclude tours of active duty for training as a reservist).
2. Have you ever been discharged from the armed forces under conditions other than Honorable (i.c, Dishonorable, Other than Honorable, Undesirable, Bad Conduct, General Discharge, Under Honorable Conditions)? You may omit any such discharge changed to Honorable by a Discharge Review Board or similar authority.
3. Do you claim 5 -point preference based on active duty in the armed forces?

X
4. Do you claim a 10 -point preference?

X
5. List for All Military Service: (N/A if not applicable)
\begin{tabular}{ll|l|l|l}
\hline \multicolumn{2}{c|}{ Date (From - To) } & Rank at Discharge, Lost Time & \multicolumn{1}{|c}{ Branch of Service } & \multicolumn{1}{c}{ Type of Discharge } \\
\hline N/A & & \begin{tabular}{l} 
Rank: N/A \\
Lost Time: 000000
\end{tabular} & N/A \\
\hline
\end{tabular}

Supporting Documentation

Privacy Act Statement: Your information will be used to determine your qualifications and suitability for USPS employment. Collection is authorized by 39 USC 401, 410, 1001, 1005 and 1206. Providing the information is voluntary, but if not provided, you may not receive full consideration. We may disclose your information as follows: in relevant legal proceedings; to law enforcement when the USPS or requesting agency becomes aware of a violation of law; to a congressional office at your request; to entities or individuals under contract with USPS; to entities authorized to perform audits; to labor organizations as required by law; to federal, state, local or foreign government agencies regarding personnel matters; to the Equal Employment Opportunity Commission; and to the Merit Systems Protection Board or Office of Special Counsel; and to the Selective Service System.

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Name ( First, MI, Last): Gcrald E Groff
F.USeffis Space forDeetiled Answers



\section*{G. Cerification}

I certify that all of the statements made in Applicant Name Date/Time of Electronic Signature this application are truc, completc, and GERALD E GROFF 09/12/2010 / 22:30:04 correct to the best of my knowledge and belief and are in good faith.


A false or dishonest answer to any question in this application may be grounds for not employing you or for dismissing you after you begin work, and may be punishable by fine or imprisonment. (US Code, Title 18, Sec. 1001). All information you give will be considered in reviewing your application and is subject to investigation.



Name ( First, MI, Last): GERALD E GROFF


UNITED STATES POSTAL SERVICE \({ }^{\circ}\)

EEO Complaint of Discrimination in the Postal Service
(See Instructions and Privacy Act Statement on back of form.)

16. Explain the specific actlon(s) or situations) that resulted in you alleging that you were discriminated against (treated differently than other employees or applicants) because of your race, color, religion, sex, age ( \(40+\) ), national origin, genetic information, disability, or retaliation for participation in a protected EEO activity. Note that if your allegation Is similar or related to a previous complaint, that complaint may be amended. 29 C.F.R. 5 1614.106(d). Please use additional pages if necessary.
(see attached)
17. What remedy are you seeking to resolve this complaint?


This notice will attest to the fact that on September 19, 2017 I advised you of the actions taken concerning the alleged discrimination that you brought to my attention. If the matters that you raised during the pre-complaint processing stage have not been resolved, you have the right to file a formal complaint within 15 calendar days of the date you recelve this notice. If you decide to file a formal complaint, your complaint must be put in writing and signed by you or your attorney, if you relained one to represent you. I am providing you with PS Form 2565, EEO Complaint of Discrimination in the Postal Service, for this purpose. Your complaint must be mailed or delivered to:
```

NEEOISO - Formal Complaints
U.S. POSTAL SERVICE
P.O. BOX }2197
TAMPA, FL 33622-1979

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Your complaint will be deemed timely flled if it is received at this address before the expiration of the 15 -day filing period, or if it bears a postmark that is dated before the expiration of the filing period. In the absence of a legible postmark, it must be received by mail within 5 calendar days of the expiration of the filing period.

An EEO discrimination complaint can be processed only if the complainant alleges he or she has been discriminated against on the basis of race, color, religion, sex (mate, female), sex (LGBT), national origin, age ( \(40+\) ), disability, genetic information, or retaliation for participation in protected EEO activity. In addition, courts have ruled the complainant has the burden of presenting evidence which would give rise to an inference of discrimination. A complaint must contain the following information:
(1) Your name, address, position, and level;
- If you change your address, you have a regulatory requirement to immediately report the change to the address below: NEEOISO-EEO Contact Center, U.S. Postal Service, P.O. Box 21979, Tampa, FL 33622-1979
(2) The specific action or matter complained of, the date of occurrence, and the names of the official(s) who took the alleged discriminatory action at issue in this complaint;
(3) The specific type of discrimination alleged, (e.g., race - African American, sex - female);
- If you allege age discrimination, you must have been at least 40 years of age on the date the alleged discriminatory action occurred.
(4) A brief statement of the facts that led you to believe you were discriminated against and the names of similarly situated individuals whom you believe were treated differently than you.
- If you allege a failure to accommodate a disability or your religion, you must explain the accommodation sought and why you sought it.
- If you allege retaliation, you must show a connection between the action about which you are complaining and your participation in protected EEO activity. You also must show when the alleged discriminatory action at issue in this complaint occurred, the management official who took the action was aware that you had previously engaged in protected EEO activity.
(5) The name of the EEO Alternative Dispute Resolution Specialist who provided you with this notice and the date you received thls Notice of Right to File.

\section*{Privacy Act Statement and Rehabilitation Act Notice}

Privacy Act Statement: Your information will be used to adjudicate complaints of alleged discrimination and to evaluate the effectiveness of the EEO program. Collection is authorized by 39 U.S.C. 401, 409, 410, 1001, 1005, and 1206. Providing the information is voluntary, but if not provided, we may not be able to process your request. We may disclose your information as follows: in relevant legal proceedings; to law enforcement when the U.S. Postal Service \({ }^{(3}\) (USPS \({ }^{\text {® }}\) ) or requesting agency becomes aware of a violation of law; to a congressional office at your request; to entitles or individuals under contract with USPS; to entities authorized to perform audits; to labor organizations as required by law; to federal, state, local or foreign government agencies regarding personnel matters; to the Equal Employment Opportunity Commission; and to the Merit Systems Protection Board or Office of Special Counsel. For more infomation regarding our privacy policies, visit www.usps. com/privacypolicy.
Signature of EEO Alternative Dispute Resolution Specialist

Alternative Dispute Resolution Specialist: If you are mailing this notice, you must send it by Priority Malle, Signature Confirmation \({ }^{\text {™ }}\) delivery. PS Form 2579-A, October 2015

Rehabilitation Act Notice: Under the Rehabilitation Act, medical infingation is confidential and may only be requested or disclosed in vert biped circumstances. Medical documentation about the complainant's and possible comparison employees' medical conditions and work restrictions ifiay be co requested in connection with the investigation of an EEO complaint. Information about medical restrictions (but not medical conditions) obtained in the. 1 ourse \(D\) of an EEO investigation may be disclosed to supenvisors and managersңwho need to know about restrictions on the work or duties of the employeel. and about necessary accommodations. Supervisors and manages ane no permitted to share such information with peers or subordinates or to fircuss the information with those who have no need to know and whose recuegts. for the information are not job-related and consistent with business n aceaty.

Date Reesived
\(9-21-2017\)

\section*{\#16 Description of Complaint of Religious Discrimination}

My right to keep the Christian Sabbath (Sunday) is being discriminated against by the supervisors at the Lancaster Carrier Annex (LCA) who are mandating attendance for Amazon parcel deliveries on the Sundays I am scheduled.

I have explained my religious beliefs to these supervisors during the course of 4 Pre-Disciplinary Interviews (PDIs) conducted on April 5, 2017 (with Aaron Zehring, Station Manager/LCA); May 10, 2017 (with Diane Evans, Supervisor/LCA); July 3, 2017 (with Treva Morris, Supervisor/LCA); and August 9, 2017 (with Diane Evans, Supervisor/LCA). During these PDI meetings, I have clearly stated that it is my religious belief to keep the entire day of Sunday as a day of rest---the full day is to be set aside to honor the Lord as a day that is unique and important. Therefore, in good conscience, I cannot report to work at all on Sundays, even after church services are finished. I also explained that my lack of attendance on Sundays was in no way an act of defiance to management, but merely because of my religious beliefs. I believe that LCA management was putting my "back against the wall" and asking me to choose between honoring God or respecting their demands. I felt I had to choose to honor God, and told them this during the PDI meetings.

Nevertheless, on June 12, 2017 I received official discipline---a Letter of Warning (dated June 9, 2017) from Diane Evans, a supervisor at the Lancaster Carrier Annex. The letter charges me with "Unsatisfactory Attendance-Failure to be regular in Attendance", and goes on to threaten that any future deficiencies will result in more severe disciplinary action, including further discipline and removal from the Postal Service. In addition, during this same time period, I was informed verbally by my immediate supervisor (Brian Hess, Holtwood Post Office) that he was told that the management at the Lancaster Carrier 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.

In a recent settlement offer negotiated by EEO ADR Specialist Jane Wixon, postal management cited the Memorandum of Understanding (MOU) signed between the USPS \& NRLCA Postal Union which (in their estimation) makes no provision for the granting of leave for my keeping of the Sabbath. However, paragraph six of the MOU makes provision for RCAs (like myself) to be exempted from Sunday work in certain situations (e.g. RCA is holding down route during absence of regular carrier, RCA has approved leave during that time period, and/or RCA would exceed 40 work hours during that week). While keeping the Sabbath is not clearly stated in this paragraph, the precedent of granting exemptions from Sunday work do clearly exist within the text of this MOU agreement for special circumstances, and I believe that (in consideration with my Federal rights against religious discrimination in the workplace) I should be granted similar leave without threat of discipline or retaliation at any level of USPS management.

\section*{\#17 Remedy Sought to Resolve Complaint}

Therefore, as a remedy to this situation, I seek total exemption (Leave Without Pay/LWOP) from work duty on Sundays for the sake of my religious right to keep the Sabbath in its entirety without penalty, discipline, threats, harassment, or retaliation from the USPS. In addition, I would request my work record be wiped clean of all undue discipline related to this dispute (i.e. Letter of Warning dated June 9, 2017 and any subsequent issuances). I request any back pay that I may be due for loss suffered during the course of this dispute. And, finally, for the sake of clarity, I am requesting a reasonable accommodation that shall include the keeping of the entire dav of the Sabbath (Sunday). USPS management's offer to attend church, and then report to work OR to take another workday during the week as my Sabbath does not constitute a reasonable accommodation and are unacceptable resolutions from my perspective.

\begin{tabular}{|c|c|l|}
\hline Page No. & No. Pages & Case No. \\
2 & 10 & \(4 \mathrm{C}-170-0051-17\)
\end{tabular}
3. During the timeframe of this complaint, please identify your organizational relationship to the Complainant (i.e. Supervisor, Manager, etc.)? I am Gerald E. Groff's manager/supervisor at the Holtwood Post Office.
4. Identify the name and title of your immediate supervisor.

Keith Krempa
Post Office Operations Manager

\section*{RELIGION ALLEGATIONS}
5. Identify your religion. I am a Bible believing Christian saved by grace.
6. Identify the Complainant's religion. Christian. I am not aware if he identifies with a particular denomination.
7. When (approximate date) and how did you become aware of the Complainant's religion? Gerald E. Groff informed me of his religious beliefs when he asked to transfer to the Holtwood Post Office on July 22, 2016. At the time we had a Rural Carrier Associate vacancy. He told me at that time part of the reason he wanted to transfer from the Quarryville Post Office to the Holtwood Post Office was to avoid to being forced to work Sundays to deliver Amazon parcels. At that point in time the Holtwood Post Office was not receiving and delivering Amazon parcels.
8. Has the Complainant requested reasonable accommodation for his religion, and if so, what action was taken? When was the request received and when was the action taken on the request? Please provide a copy of both the request and the action taken if they were in writing.
No written request was ever made to me by Gerald E. Groff. The first date Gerald E. Groff was scheduled to work Sunday was March 19, 2017. When I informed him, He stated that due to his religious Faith he could not work Sundays since it broke the \(4^{\text {th }}\) commandment to remember to keep the Sabbath holy. I informed him at this time the Lancaster Carrier Annex could be flexible with his start

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

\begin{tabular}{|c|c|l|}
\hline Page No. & No. Pages & Case No. \\
2 & 9 & \(4 \mathrm{C}-170-0051-17\)
\end{tabular}
4. Identify the name and title of your immediate supervisor. Doug French at the time of the EEO complaint. Aaron Zehring Acting Postmaster of Lancaster Carrier Annex present.

\section*{RELIGION ALLEGATIONS}
5. Identify your religion. Christian
6. Identify the Complainant's religion. Christian
7. When (approximate date) and how did you become aware of the Complainant's religion? I learned of Gerald's religion from Aaron Zehring after the PDI.
8. Has the Complainant requested reasonable accommodation for his religion, and if so, what action was taken? When was the request received and when was the action taken on the request? Please provide a copy of both the request and the action taken if they were in writing.
Gerald Groff has not requested written reasonable accommodations for his religion. Mr. Groff has said that he does not want to work Sunday's. Mr. Groff has stated that from the time he was hired he never had to work Sunday's until the MOU Sunday/Holiday parcel delivery work list was signed. We in Lancaster offered Mr. Groff to report to work on Sunday's after his religious services.
9. What specific accommodation did the Complainant request?

Gerald requested to not be scheduled to work on Sunday's at all due to his belief "Thou shall not work on the Sabbath day".
10. How does the Complainant's requested accommodation relate to the ability to perform the duties required in the Complainant's assignment? His request is a violation of the MOU signed on 5/24/16 and he is not completing his assignment duties that are required by the USPS.

Ideclare under penalty of perjury that the foregoing is true and correct.
\begin{tabular}{|c|c|c|}
\hline Aflant's Signature & \begin{tabular}{l}
\(\theta\) \\
C
\end{tabular} & \[
\begin{gathered}
\text { Date Signed } \\
12 / 8 / 17
\end{gathered}
\] \\
\hline
\end{tabular}

PS Form 2569, October 2015

\section*{RELIGION ALLEGATIONS}
5. Identify your religion. Catholic
6. Identify the Complainart's religion. I do not know

I don't know his religion
8. Has the Complainant requested reasonable accommodation for his religion, and if so, what action was taken? When was the request received and when was the action taken on the request? Please provide a copy of both the request and the action taken if they were in writing.
Yes, to not work on Sunday. We offered for him to come in late to work if he needed to attend church services which we have allowed other employees to do.
9. What specific accommodation did the Complainant request? To not work on Sunday
10. How does the Complainant's requested accommodation relate to the ability to perform the duties required in the Complainant's assignment? There is an M.O.U. signed by the Postal Service and Rural Carrier Union on \(5 / 24 / 16\). His request is in violation
of this M.U.
11. What specific accommodation was granted? If the accommodation granted is different from what the Complainant requested, please explain why We offered for him to have another Sabbath day during the week or we would accommodate him to have a letr stant time to attend services

HaAfibbirg P\&DCC01879-gLS Document 36-2 Filed 02/14/20 Page 31 of 356 .
CPA District
UNTEDSTATES

DATE: June 9, 2017

\section*{SUBJECT: Letter of Warning}

TO: \(\begin{array}{ll}\text { Name Gerald Groff } \\ & \text { FIN: } \\ & \text { Position RCA }\end{array}\)

This official Letter of Warning is being issued to you for the following reasons):
CHARGE: Unsatisfactory Attendance-Failure to be regular in Attendance
During the period of April 16, 2017, through May 7, 2017, you were absent from duty as follows:
April 16, 2017
April 23, 2017
\(\begin{array}{ll}8.00 \text { hours } & \text { ULWOP } \\ 8.00 \text { hours } & \text { ULWOP } \\ 8.00 \text { hours } & \text { ULWOP }\end{array}\)
May 07, 2017
\[
8.00 \text { hours ULWOP }
\]

The three separate occasions of unscheduled absences account for a total of 24.00 hours.
A Pre-Disciplinary Interview (PDI), your day in court privilege was held on May 10, 2017 with you regarding consideration of disciplinary action against you. The interview afforded you an opportunity to give an explanation regarding the circumstances of the matter.

You were given an opportunity to provide an explanation for each one of your unscheduled absences cited above. The explanation you provided for your unscheduled absences is that Sunday's is the Sabbath day and you do not work on the Sabbath day.

Your Failure to be regular in Attendance violates but not limited to the following Postal Rules and Regulations:

Memorandum of Understanding Between The United States Postal Service And The National Rural Letter Carriers' Association
The parties agree that rural carrier leave replacements will be assigned, as appropriate, to complete Sunday/holiday parcel deliveries.

Employee and Labor Relations Manual, Section 511.43 Employee Responsibility: Employees are expected to maintain their assigned schedule and must make every effort to avoid unscheduled-absences. In addition, employees must provide acceptable evidence for absences when required.

Employee and Labor Relations Manual, Section 665.41 Requirement of Regular Attendance: Employees are required to be regular in attendance. Failure to be regular in attendance may result in disciplinary action, including removal from the Postal Service. Your failure to comply with these regulations warrants this action.

It is hoped that this official Letter of Warning will serve to impress upon you the seriousness of your


Case 5:19-cy-0187 D LS Document 36-2 Filed 02/14/20 Page 32 of 356
actions and that future dimipline will not be necessary. If you are laving difficulties which I may not be aware of, or if you need additional assistance or instructions for improving your performance, please call on me, or you may consult with other supervisors and we will assist you where possible. However, I must warm you that any future deficiency (or misconduct, or offense) will result in more severe disciplinary action being taken against you. Such action may result in further discipline up to and including removal from the Postal Service.
You have a right to file a grievance under the grievance/arbitration procedure set forth in Article 15 of the National Agreement within 14 calendar days of your receipt of this letter.

Bi \(m\) Hess

Name
Diane Evans, Supervisor

Brian \(m\) tess Postmaster Holtwoo


Date: \(6-12-2017\)
Time: \(1: 35 \mathrm{PM}\)

Case 5:19-cv-01879.JLS Document 36-2 Filed 02/14/20 Page 33 of 356

\title{
MEMORANDUM OF UNDERSTANDING BETWEEN THE \\ UNITED STATES POSTAL SERVICE \\ AND THE NATIONAL RURAL LETTER CARRIERS' ASSOCIATION
}

\author{
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 thity (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.


Cathy M/Perron
Manager
Contract Administration (NRLCA)
U.S. Postal Service

Date



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\subsection*{511.3 Eligibility}

\subsection*{511.31 Covered}

Covered by the leave program are:
a. Full-time career employees.
b. Part-time regular career employees.
c. Part-time flexible career employees.
d. To the extent provided in the USPS National Rural Letter Carriers' Association (NRLCA) National Agreement, temporary employees assigned to rural carrier duties.

Note: Transitional employees are not covered by the leave program, but do eam leave as specified in their union's national agreement.
References to A-E Postmasters also apply to Part-Time Postmasters.

\subsection*{511.32 Not Covered}

Not covered by the leave program are:
a. Postmaster relief/leave replacements, noncareer officers in charge, and other temporary employees except as described in 511.31d.
b. Casual employees.
c. Individuals who work on a fee or contract basis, such as job cleaners.

\subsection*{511.4 Unscheduled Absence}
511.41 Definition

Unscheduled absences are any absences from work that are not requested and approved in advance.
511.42 Management Responsibilities

To control unscheduled absences, postal officials:
a. Inform employees of leave regulations.
b. Discuss attendance records with individual employees when warranted.
c. Maintain and review PS Form 3972, Absence Analysis, and PS Form 3971.
511.43 Employee Responsibilities

Employees are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences. In addition, employees must provide acceptable evidence for absences when required.

\section*{512 Annual Leave}
512.1 General
512.11 Purpose

Annual leave is provided to employees for rest, for recreation, and for personal and emergency purposes.

CONFIDENTIAL
00215

Exhibit 13
Page 2 of 1
;
USPS Tracking \({ }^{\circ}\)

FAQs > (http://faq.usps.com/?articleld=220900)
Track Another Package +
4C-170-0051-17-cp Groff

Tracking Number: 9114901496451642753416

Your item was delivered to a parcel locker at 12:57 pm on March 3, 2018 in NEW PROVIDENCE, PA 17560.

\section*{© Delivered}

March 3, 2018 at 12:57 pm
Delivered, Parcel Locker NEW PROVIDENCE, PA 17560

Get Updates \(V\)
\begin{tabular}{lc}
\hline Text \& Email Updates & \(\vee\) \\
\hline Tracking History & \(\vee\) \\
\hline Product Information & \(\vee\) \\
\hline
\end{tabular}

\section*{See Less \(\boldsymbol{\wedge}\)}

\section*{Can't find what you're looking for?}

Go to our FAQs section to find answers to youtriwc

\section*{USPS Tracking \({ }^{\circ}\)}

\section*{Track Another Package +}

4C-170-0051-17-Rep
Tracking Number: 9114901496451642753423

\section*{Expected Delivery on}

\section*{FRIDAY}
\(23 \underset{\substack{\text { february } \\ 2018(i)}}{\text { 8:00pm(i) }}\)

\section*{© Delivered}

February 23, 2018 at 9:17 am
Delivered, \(\ln /\) At Mailbox
BLANDON, PA 19510
Get Updates \(\vee\)
\(\qquad\)

See Less \(\boldsymbol{\wedge}\)

How can I help you?

\title{
UNITED STATES POSTAL SERVICE EQUAL EMPLOYMENT OPPORTUNITY CASE IN THE MATTER OF:
}

\section*{Gerald Groff \\ Complainant}

Agency Case No. 4C-170-0051-17

\section*{v.}

Megan J. Brennan, Postmaster General, c/o Eastern Area Operations Respondent.

Formal Filed: October 3, 2017
\(\qquad\)

FINAL AGENCY DECISION

\section*{Introduction}

Pursuant to Equal Employment Opportunity Commission (EEOC) regulations at 29 C.F.R. §1614.110, this is the final agency decision of the U.S. Postal Service regarding the complaint of discrimination identified above.

\section*{Statement of Claim}

The complainant alleged discrimination based on Religion (Evangelical Christian) when:
1) Since a date to be specified around April 2017 and continuing, he has not been accommodated per his religious beliefs; and
2) On June 12, 2017, he was issued a Letter of Warning (LOW).

\section*{Chronology}

This complaint was processed in accordance with the applicable Equal Employment Opportunity Commission (EEOC) regulations, 29 C.F.R. §1614.103 et seq. An investigation was conducted, and a copy of the investigative report was transmitted to the complainant on January 3, 2018. Following the receipt of that report, the complainant had 30 days within which to request a hearing before an EEOC Administrative Judge (AJ) or a final agency decision without a hearing.

On January 22, 2018, the complainant requested a final agency decision on the merits of the complaint. Thus, this decision is being issued pursuant to the complainant's request.

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\section*{Applicable Law}

\section*{Disparate Treatment}

The United States Supreme Court established a burden-shifting framework for analyzing claims of discrimination in McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973), and subsequently refined that analysis in Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981). The McDonnell Douglas and Burdine approach involves a three-step process when a complainant alleges intentional discrimination based on a disparate treatment theory. The Equal Employment Opportunity Commission has adopted this approach in its decision making. Downing v. U.S. Postal Service, EEOC Appeal No. 01822326 (September 19, 1983); Jennings v. U.S. Postal Service, EEOC Appeal No. 01932793 (April 13, 1994); and Saenz v. Department of the Navy EEOC Request No. 05950927 (January 9, 1998). A complainant alleging discrimination must first demonstrate that there is some substance to his or her claim. To satisfy this burden, the complainant must establish a prima facie case of discrimination for each of the bases of discrimination alleged by a preponderance of the evidence. Furnco Construction Company v. Waters, 438 U.S. 576 (1978).

Although a complainant may establish a prima facie case by presenting direct evidence of discrimination, the more frequent method of establishing a prima facie case is through circumstantial evidence by showing that he or she: (1) belongs to a protected group; (2) was subjected to an adverse employment action; and (3) was treated differently in this regard than similarly situated individuals who were not members of the protected group. Hill v. Department of Veterans Affairs, EEOC Appeal No. 0120063979 (November 28, 2007); Mayberry v. Vought Aircraft Company 55 F.3d 1086, 1090 (5 \({ }^{\text {th }}\) Cir. 1995); Mitchell v. Toledo Hospital, 964 F.2d 577, 582-83 ( \(6^{\text {th }} \mathrm{Cir}\). 1992). The failure to establish a specific element of a prima facie case may be overcome by presenting evidence of agency actions from which an inference of discrimination could be drawn if they remained unexplained. Day v. U.S. Postal Service, EEOC Appeal No. 01996097 (September 18, 2000).

Once a prima facie case has been established, the burden of production shifts to the employer to articulate a legitimate, non-discriminatory reason for its action. Furnco, 438 U.S. at 578. See also St. Mary's Honor Center v. Hicks, 509 U.S. 502, 506 (1993). The employer need not persuade the trier of fact that the proffered reason was its actual motivation but merely needs to raise a genuine issue of fact as to whether it discriminated against the complainant. Burdine, 450 U.S. at 254; Keval v. Commodity Futures Trading Commission, EEOC Appeal No. 01832127 (November 2, 1984); Hollis v. Department of Veterans' Affairs, EEOC Appeal No. 01934600 (May 3, 1994). If the agency offers no adequate explanation for the discrepancy in treatment between the complainant and similarly situated employees, the agency does not carry its burden of production and the complainant prevails on the basis of the inference of discrimination created by the prima facie case. Frady v. U.S. Postal Service, EEOC Appeal No. 01 A05317 (January 10, 2003); Houston v. Department of Veterans' Affairs, EEOC

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Appeal No. 01976054 (August 27, 1999); and Parker v. U.S. Postal Service, EEOC Request No. 05900110 (April 30, 1990).

If the employer meets this burden, any presumption of discrimination created by the prima facie case disappears; it simply "drops from the case." Hicks, 509 U.S. at 507; U.S. Postal Service Board of Governors v. Aikens, 460 U.S. 711, 715 (1983). See also Hernandez v. Department of Transportation, EEOC Request No. 05900159 (June 28, 1990) and Peterson v. Department of Health and Human Services, EEOC Request No. 05900467 (June 8, 1990). The complainant can then prevail only if he or she proves that the employer's reasons are not only pretext but are pretext for discrimination. Hicks, 509 U.S. at 507 and 516; Nichols v. Grocer, 138 F.3d 563, 566 ( \(5^{\text {th }}\) Cir. 1998); Swanson v. General Services Administration, 110 F.3d 1180, 1185 ( \(5^{\text {th }}\) Cir. 1997). See also Papas v. U.S. Postal Service, EEOC Appeal No. 01923753 (March 17, 1994) and Bradford v. Department of Defense, EEOC Appeal No. 01940712 (September 20, 1994). Thus, the complainant cannot create a factual issue of pretext based merely on personal speculation that there was discriminatory intent. Southard v. Texas Board of Criminal Justice, 114 F.3d 539, 555 ( \(5^{\text {th }}\) Cir. 1997); Lyles v. U.S. Postal Service, EEOC Appeal No. 01A11110 (May 22, 2002); and Nathan V. U.S. Postal Service, EEOC Appeal No. 01995788 (August 29, 2001).

Pretext involves more than a mistake. It means that the reason offered by management is factually baseless, is not the actual motivation for the action, or is insufficient to motivate the action. Tincher v. Wal-Mart Stores, Inc., 118 F.3d 1125, 1130 ( \(7^{\text {th }}\) Cir. 1997) and Morgan v. Hilti, Inc., 108 F.3d 1319, 1323 ( \(10^{\text {th }}\) Cir. 1997). The complainant always carries the "ultimate burden of persuading the trier of fact that he has been the victim of intentional discrimination." Burdine, 450 U.S. at 254 and Hicks, 509 U.S. at 511.

The ultimate burden of persuasion remains with the complainant. Board of Trustees of Keene College v. Sweeney, 439 U.S. 24, 25 N. 2 (1978). This burden was reaffirmed and clarified in St. Mary's Honor Center v. Hicks, supra., where the Court held that in order to impose liability upon an employer for discriminatory employment practices, an ultimate finding of unlawful discrimination is required whether or not the employer's explanation for its action was believable. See also Brewer v. U.S. Postal Service, EEOC Appeal No. 01941786 (June 21, 1994) and Montoya v. Department of Housing and Urban Development, EEOC Appeal No. 01940999 (August 4, 1994).

\section*{Religious Discrimination}

In order to establish a prima facie case of disparate treatment based on religion, a complainant must establish that: (1) he or she is a member of a protected group; (2) he or she was subjected to an adverse employment action; and (3) similarly situated employees outside the complainant's protected group were treated more favorably in like circumstances. Wooten v. U. S. Postal Service, EEOC Appeal No. 01980848 (February 11, 2000); Potter v. Goodwill Industries of Cleveland, 518 F.2d 864 ( \(6^{\text {th }} \mathrm{Cir}\).

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1975); and Furnco Construction Company v. Waters, 438 U.S. 576 (1978). A claim of religious discrimination due to disparate treatment follows the same allocation of the burden and order of proof as in any Title VII disparate treatment claim.

In order to establish a prima facie case of discrimination based on a failure to accommodate religious practices or beliefs, a complainant must demonstrate by a preponderance of the evidence that he or she: (1) has a bona fide religious belief that conflicts with an employment requirement; (2) informed the employer of this belief and conflict; and (3) that the agency enforced the employment requirement and the complainant suffered an adverse employment action for failing to comply with the conflicting employment requirement. Green v. U. S. Postal Service, EEOC Appeal No. 01982669 (October 5, 1999) and Bishop v. Department of the Air Force, EEOC Petition No. 03970085 (September 16, 1997). See also 29 C.F.R. §1605.1 et seq.

Equal Employment Opportunity Commission guidelines broadly define religious practices to include moral and ethical beliefs as to what is right or wrong which are sincerely held by the individual with the strength of traditional religious views. See also United States V. Seeger, 380 U.S. 164 (1965) and Welsh v. United States, 398 U.S. 333 (1970). Title VII requires an employer to provide an accommodation unless it can show that providing the accommodation would create an undue hardship. The Supreme Court has defined undue hardship in this context as any hardship which is "...more than a de minimis cost." Trans World Airlines v. Hardison, 432 U.S. 63 (1977). The Court also held that an employer was not required to violate the seniority provisions of a collective bargaining agreement in order to achieve an accommodation of an employee's religious beliefs.

\section*{Similarly Situated Employees}

One of the key elements of a prima facie case of disparate treatment based on an adverse employment action is proof that similarly situated comparison employees not in the complainant's protected group were treated more favorably. This is so, in part, because agencies are not monolithic entities. Turner v. Department of the Navy, EEOC Request No. 05900445 (September 25, 1990). In general, in the absence of direct evidence of discrimination, if the complainant cannot identify any similarly situated comparison employees who were treated more favorably, he or she will not prevail. Aguilar v. U.S. Postal Service, EEOC Appeal No. 01944167 (August 8, 1995).

In order for two or more employees to be considered similarly situated for the purpose of creating an inference of disparate treatment, a complainant must show that all of the relevant aspects of his or her employment situation are virtually identical to those of the other employees who he or she alleges were treated more favorably. Smith v. Monsanto Chemical Company, 770 F.2d 719, 723 (8 \(8^{\text {th }} \mathrm{Cir}\). 1985); Murray v. Thistledown Racing Club, Inc., 770 F.2d 63, 68 (6 \({ }^{\text {th }}\) Cir. 1985); Nix V. WLCY Radio/Rahall Communications, 738 F.2d 1181, 1185 (11 th Cir. 1984); Mazzella v. RCA Global Communications, Inc., 642 F.Supp. 1531, 1547 (S.D. N.Y. 1986), affd. 814 F.2d 653

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(2 \({ }^{\text {nd }}\) Cir. 1987). The Equal Employment Opportunity Commission has on numerous occasions ruled in similar fashion. See, for example, Tolar v. U.S. Postal Service, EEOC Appeal No. 01965083 (December 16, 1998), citing O'Neal v. U.S. Postal Service, EEOC Request No. 05910490 (July 23, 1991); and Knapp-Huffman v. Department of Justice (Bureau of Prisons), EEOC Appeal No. 01991026 (January 16, 2002).

If employees have different supervisors, perform different job functions, were subject to different job standards, engaged in different conduct, or worked during different time periods, they are not similarly situated. O'Neal, Id.; Allen v. Department of the Navy, EEOC Request No. 05900539 (June 15, 1990); Willis v. Department of the Treasury, EEOC Appeal No. 01A51459 (March 16, 2003); and Stewart v. Department of Defense, EEOC Appeal No. 01A02890 (June 27, 2001).

For employees to be considered similarly situated, their medical and physical restrictions must be the same as the complainant's. Curtin v. U.S. Postal Service, EEOC Appeal No. 01891910 (March 27, 1990); Briand v. U.S. Postal Service, EEOC Appeal No. 01932677 (February 2, 1994); Woody v. TVA, EEOC Appeal No. 0120063987 (December 17, 2007).

\section*{Background}

At all times relevant to the issue in this complaint, the complainant was employed as a Rural Carrier Associate (RCA) at the Holtwood Post Office in Holtwood, Pennsylvania. (Investigative File [IF], Exhibit [Exh.] 1). The complainant has alleged that Brian Hess, Postmaster; Diane Evans, Supervisor, Customer Service; and Aaron Zehring, Manager, Customer Service; and Douglas French, Postmaster, have intentionally discriminated against him because of his Religion (Evangelical Christian) when:
1) Since a date to be specified around April 2017 and continuing, he has not been accommodated per his religious beliefs; and
2) On June 12, 2017, he was issued a LOW.
1) Since a date to be specified around April 2017 and continuing, he has not been accommodated per his religious beliefs;

The complainant averred that he had been called in for Pre-Disciplinary Interviews (PDI) on April 5, 2017; May 10, 2017; July 3, 2017; August 9, 2017; and October 3, 2017 in regards to his absences on scheduled Sundays at the Lancaster Carrier Annex. He testified that he also received a LOW dated June 9, 2017, for this same reason. (IF, Affidavit [Aff.] A, p. 2).

The complainant attested that beginning in March 2017, the Postal Service began a new policy of requiring delivery of Amazon parcels on Sundays and holidays yearround. He contended that in the past this has only been required for relatively short

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periods of time close to Christmas and he had been able to avoid delivering on any Sundays by working extra shifts during the week instead or later transferring to a post office that did not deliver on Sundays. The complainant averred that prior to the start of year-round Sunday delivery, a sign-up sheet was provided in the office to state if one wished to be scheduled or not for Sunday work. He attested that he clearly stated that he did not want to be scheduled for Sundays at all, nevertheless due to lack of proper staffing in his district, it was mandated that all substitute carriers would be required to work Sundays and holidays as scheduled from March 2017 onward without exception. The complainant testified that this policy was enforced without reasonable accommodation against him by the Lancaster Carrier Annex. He declared that he received threats of immediate suspension and/or dismissal regardless of his request for a reasonable accommodation. (IF, Aff. A, p. 3).

The complainant contended that he is a bible believing Evangelical Christian, and believed that Sundays are the lord's day and that the entirety of that day is to be set aside as unique and holy as unto the lord as a day of worship and rest. He attested that the Lord's Day is a day to honor God in a special way for the entire day and in particular, he is to refrain from working at his job unless it is one of critical need (hospitals, emergency care, etc.). The complainant testified that his sincere religious conviction is that the delivery of Amazon parcels does not qualify as a critical need, and therefore he requested a reasonable accommodation to be excused from work on Sundays in order to keep the Lord's Day in its entirety as require by his religious convictions. He attested that he made this request at every PDI. (IF, Aff. A, p. 3). The complainant contended that he was not offered this accommodation, but was told that he could come in after church; however, he believed that this was not an accommodation, since he does not work on Sunday at any time because of his religion. He averred that he was charged with Unscheduled Leave Without Pay (uLWOP) on these Sundays where he did not report for duty as scheduled. The complainant declared that his religious beliefs should be accommodated through the Federal Laws that prohibit religious discrimination. (IF, Aff. A, p. 4).
2) On June 12, 2017, he was issued a LOW.

The complainant attested that Supervisor Evans issued him the LOW dated June 9, 2017 on June 12, 2017. He testified that no discipline had been issued as part of the April 5, 2017 PDI for the same issue, but after the May 10, 2017 PDI, where he again stated that he was not reporting because he believed he should be given a religious accommodation for his faith, he received the LOW. (IF, Aff. A, p. 5). The complainant contended that management's reasons for the discipline were based on the Memorandum of Understanding (MOU) regarding the Amazon deliveries and that leave replacements (like himself) were required to complete Sunday Amazon deliveries, and the Employee Labor Relations Manual (ELM) required that employees are expected to keep regular attendance and avoid unscheduled absences. (IF, Aff. A, p. 6).

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The complainant testified that he disagreed with this action because the Postal Service does not have a right to punish him for exercising his constitutional right to practice his religion. He contended that he has been a model employee for over five years and he had a proven record of regular and punctual attendance. He attested that each time he was scheduled for Sundays he communicated to Postmaster Hess that he was declining to work Sunday based on his religious beliefs and he in turn would inform the Lancaster Carrier Annex Management. (IF, Aff. A, p. 6). The complainant averred that he believed that is was unreasonable that the LOW charged him with "NO Call, No Show," when he was doing the responsible thing to make sure management understood his religious reason for not reporting prior to the particular Sunday. He declared that the MOU also allowed allowances for employees to be excused from Sunday delivery who were granted leave for that time period or who were holding down a route and had sufficient hours that week in overtime, and therefore religious beliefs should also be an exception. (IF, Aff. A, p. 7).

The record contained a LOW dated June 9, 2017 issued to the complainant by Supervisor Evans and signed by Postmaster Hess for Unsatisfactory AttendanceFailure to be Regular in Attendance for being absent from duty on Sunday, April 16, 2017; Sunday, April 23, 2017; and Sunday, May 7, 2017. (IF, Exh. 2, pp. 1-2).

Evidence revealed Sunday/Holiday Parcel Delivery, Hub Office Assignment List, dated June 2016, which stated that Holtwood Post Office is a nearby rural office that is assigned to the Lancaster Hub for Sunday/holiday deliveries. (IF, Aff. D, p. 18).

Record evidence showed a Holtwood Post Office Amazon Sunday Volunteer List, dated April 28, 2017 which showed that the complainant had signed "no." (IF, Aff. D. p. 19).

The record revealed Sunday work assignments from March 19, 2017 through October 29, 2017, and listed the employees that were scheduled to work on various Sundays. (IF, Aff. D, pp. 20-39).

Evidence contained emails to and from Lancaster Carrier Annex management and Postmaster Hess which showed on March 10, 2017 the Amazon Sunday delivery plan was explained and stated it was effective March 19, 2017. On March 15, 2017, Postmaster Hess advised Postmaster French that the complainant was scheduled to work but due to his faith he does not believe in working on Sundays and he will resign if forced to work Sundays. He stated that he hated to lose one of the best and most efficient RCAs that he has ever had, but the employee will not be reporting on Sunday. Postmaster French emailed back and asked "what time does the employee get finished with church?" and Postmaster Hess responded that the issue is not in relation to church time, rather it is his belief in the Commandment; "Thou shall not work on the Sabbath." On May 16, 2017 and June 6, 2017 Brain Hess informed Postmaster French that the complainant will not be reporting to work on May 21, 2017 and June 11, 2017 respectively. (IF, Aff. D, pp. 40-49).

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Record evidence showed emails dated March 28, 2017, June 1, 2017, and June 8, 2017, from Postmaster Hess to Postmaster French where he inquired if the complainant is exempted from working on Sundays and if so, can his name be removed from the list as well as email from Laurie McKinsey, Labor Relations which requested additional information in response to the request for discipline and Postmaster Hess' response to a union inquiry. (IF, Aff. B, pp. 14-16).

The record contained a letter from David W. Crossett, Cornerstone Law Firm dated November 13, 2017, which was addressed to Postmaster Hess and others and stated that the complainant is pursuing an EEO complaint regarding discipline based on his religious conviction and he is requested that the Postal Service cease from any further discriminatory discipline during the course of the complaint. (IF, Aff. B, pp. 12-13).

Evidence revealed a MOU between the USPS and the National Rural Letter Carriers' Association (NRLC) titled Sunday/Holiday Parcel Delivery Work List which stated that rural carrier leave replacements will be assigned, as appropriate, to complete Sunday/holiday parcel deliveries. It further stated that if there was an insufficient number of leave replacements on the volunteer list, management will schedule leave replacements from the non-volunteer list, on a rotating basis. (IF, Exh. 11, pp. 1-2).

\section*{Prima Facie Analysis}

\section*{Disparate Treatment}

As cited supra, a prima facie case may be established by showing that the complainant: (1) belongs to a protected class; (2) was subjected to an adverse employment action; and (3) similarly situated employees outside the complainant's protected class were treated more favorably in like circumstances. A claim of religious discrimination due to disparate treatment follows the same allocation of the burdens and order of presentation of proof as in any Title VII disparate treatment claim.

The complainant has met the first element of a prima facie case of discrimination based on disparate treatment because of his membership in the protected class of religion.

The complainant has met the second requirement of a prima facie case of discrimination based on disparate treatment in that he was denied Sundays off and received a LOW.

As part of the complainant's ultimate burden and to meet the third element above, he must show that his religion was a determinative factor in the Postal Service's actions. As stated above, this is generally shown when the complainant provides evidence of other similarly situated employees who are not of the same protected classes as the complainant is claiming, were treated more favorably in similar circumstances. See

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Aguilar, supra. The complainant did not provide comparators for his issues. (IF, Aff. A, p. 7).

Showing no discriminatory animus was present, management provided that other employees have been issued corrective action for not reporting to work on Sundays for Amazon parcel delivery, in the following: Rodena Blank (Religion: Unknown) a RCA from Gap, PA was issued a LOW on April 10, 2017 (Ms. Blank voluntarily resigned dated April 28, 2017 because of "Amazon Sunday"); Kelly Leaman (Religion: Unknown) a RCA from Narvon, PA was issued a LOW on March 28, 2017; Linda Pullman (Religion: Unknown) a RCA from Peach Bottom, PA was issued a LOW on May 9, 2017; Rita Venuto (Religion: Unknown) a RCA from Ronks, PA was issued a LOW on May 8, 2017; and Kelly Smith (Religion: Unknown) a RCA from Elizabethtown, PA was issued a LOW on May 9, 2017. (IF, Aff. C, p. 8; Aff. D, p. 15; Exh. 3, pp. 1-4; Exh. 4, pp. 1-2; Exh. 7, pp. 1-3; Exh. 8, pp. 1-3; Exh. 9, pp. 1-3).

Record evidence contained comparator Lisa Newswanger's PS Form 50, Notification of Personnel Action, which stated that she was a RCA at the Christiana Post Office, PA and she resigned effective April 28, 2017. The Resignation stated that she resigned because of the mandatory Sunday delivery of Amazon and the respect of her faith. (IF, Exh. 6, pp. 1-2).

While the complainant is not limited to presenting comparative evidence to establish a prima facie case of disparate treatment discrimination, see Lipcsey v. U.S. Postal Service, EEOC Appeal No. 01981884 (January 6, 2000), he has not presented any other evidence that affords a sufficient basis from which to draw an inference of discrimination.

Thus, the complainant has failed to establish a prima facie case of discrimination on the bases of religion, and as such, his claim must fail.

\section*{Religious Accommodation}

As cited supra, a prima facie case of discrimination based on a failure to accommodate religious practices or beliefs, may be established if the complainant can demonstrate by a preponderance of the evidence that he or she: (1) has a bona fide religious belief that conflicts with an employment requirement; (2) informed the employer of this belief and conflict; and (3) that the agency enforced the employment requirement and the complainant suffered an adverse employment action for failing to comply with the conflicting employment requirement.

The complainant has met the first element of a prima facie case of discrimination based on religious accommodation because of his bona fide religious belief of not working on the sabbath. (IF, Aff. A, p. 3).

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Agency Case Number 4C-170-0051-17
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Again, the complainant claimed that he requested this accommodation each time he was scheduled to work and at each PDI and the record showed that Postmaster Hess acknowledged this request and the complainant has met the second element of a prima facie case of discrimination based on religious accommodation in that he informed his employer of his belief and the conflict. (IF, Aff. A, p. 3; Aff. B, p. 2).

Finally, the complainant has met the third element of a prima facie case of discrimination based on religious accommodation as the record showed that he received a LOW for not working Sunday April 16, 2017; Sunday April 23, 2017; and May 7, 2017. (IF, Exh. 2, pp. 1-2).

Although the determination had been made that the complainant satisfied the essential requirements of a prima facie claim of religion accommodation in his claim, it is important to point out that such a finding is not the equivalent of a finding of discrimination. It is simply proof that, without more, the circumstances involving management actions have given rise to an inference that discrimination did occur. Thus, the burden now shifts to management to produce admissible evidence that its actions were taken for legitimate, non-discriminatory reasons. Again, a religious accommodation can be denied if it can be shown that providing the accommodation would create an undue hardship. The agency has satisfied that burden, via record evidence further outlined below.

\section*{Management's Non-Discriminatory Reason - Discrete Act(s)}
1) Since a date to be specified around April 2017 and continuing, he has not been accommodated per his religious beliefs; and

Postmaster Hess testified that in March 2016, a new process was implemented as per the NRLC which stated substitutes may be required to work Sundays on a rotating basis. (IF, Aff. B, p. 3). He averred that the Holtwood Post Office falls under the Lancaster Carrier Annex Hub and this becomes the official duty station on Sundays/holidays. Postmaster Hess attested that the complainant was scheduled to work Sundays based on being placed on a rotating schedule of all RCA's and Assistant Rural Carriers alphabetically. He contended that he would let his employees know the schedule when it came out weekly. (IF, Aff. B, p. 4). Postmaster Hess testified that the complainant informed him that he would not work Sundays based on his religious beliefs and stated that he would work extra shifts to avoid working Sundays, but that it would be showing favoritism to allow the complainant to avoid Sundays while forcing other substitutes to sacrifice going to church or spending time with their families to cover his spot. He averred that he informed the complainant that his start time could be flexible to allow him to attend church, and asked Postmaster French and Manager Zehring if scheduling the complainant only on holidays would be an option, but that request was denied. Postmaster Hess contended that the complainant was the only RCA he had to cover three rural routes and he did not want to see a good employee terminated for failing to report as scheduled. (IF, Aff. B, p. 5). He averred that the MOU

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provided that if there were enough substitutes that volunteered to work that a rotating list of all substitutes would not be needed, but there have not been enough volunteers to meet the weekly need. (IF, Aff. B, p. 8). Postmaster Hess declared that other RCA's that have religious beliefs have requested and had their Sunday start time adjusted so they can attend church services, and the complainant is still refusing to work Sundays which is starting to cause tension and a perceived double standard in the office. (IF, Aff. C, pp. 6, 10).

Supervisor Evans attested that per the new MOU guidelines, the complainant was scheduled for the following dates and did not show: 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 30, 2017; August 6, 2017; August 27, 2017; September 17, 2017; October 15, 2017; October 29, 2017; and November 11, 2017. (IF, Aff. C, pp. 3, 5). She averred that the complainant's religion was not a factor in this issue and that the MOU clearly stated that non-volunteers would be utilized after all volunteers had been utilized and none of the allowances applied to the complainant's situation and to allow him off would be in violation to the MOU and National Contract. (IF, Aff. C, pp. 5-6).

Manager Zehring averred that the complainant requested not to work at all Sundays even though he was offered to start after church, but not working on Sundays would violate the MOU signed on May 24, 2016 and would impede with the requested duties that are required by the USPS for the complainant's assignment. (IF, Aff. D, p. 9). He declared that the MOU clearly stated that the parties recognized the importance of successfully implementing the continued expansion of Sunday/holiday parcel delivery service and stated that replacements would be assigned, as appropriate to compete Sunday/holiday parcel deliveries. (IF, Aff. D, pp. 9-10). Manager Zehring testified that he makes every effort not to require substitutes that did not volunteer to work, to work, but the Postal Service is a \(24 / 7\) operation, and substitutes refusing to work Sundays could impact the operations of the Postal Service. He contended that requests for religious accommodations are not intended to be exempt of working Sundays but are more so any adjustment to the work environment that will allow the employee to practice his or her religion. Manager Zehring declared that allowing some substitutes to be exempt from working Sundays would violate the NRLC National Agreement and pose an undue burden when requiring other employees to do more than their share of burdensome work. He testified that this would be unfair and unjust to other employees and serve as disparate treatment. (IF, Aff. D, p. 12).

Postmaster French testified that the complainant was offered to have another Sabbath day during the week or they could accommodate him to have a latter start time on Sundays to attend services. (IF, Aff. E, p. 2). He averred that the complainant was scheduled for rotating Sundays at the Lancaster Carrier Annex per the MOU. (IF, Aff. E, p. 3). Postmaster French contended that the complainant's religion was not a factor in him not being accommodated. (IF, Aff. E, p. 5).

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2) On June 12, 2017, he was issued a LOW.

Supervisor Evans attested that she issued the complainant the LOW as his Sunday Amazon Supervisor and conducted the PDI with him on May 10, 2017. (IF, Aff. C, p. 6). She declared that this LOW was issued because of his refusal to maintain his work schedule. Supervisor Evans testified that the complainant's religion was not a factor in being issued the LOW. (IF, Aff. C, p. 7).

Based on the evidence in the record, management has established their nondiscriminatory reason(s) for their actions. This analysis will now address whether there is evidence of pretext.

\section*{Pretext}

At this point, the complainant has the burden of proving that management's stated reason is not only pretext, but is pretext for discrimination. Tincher v. Wal-Mart Stores, Inc., 118 F.3d 1125, 1129 ( \(7^{\text {th }}\) Cir. 1997).

Pretext could be demonstrated by showing "such weaknesses, impossibilities, inconsistencies, incoherencies, or contradictions in the Agency proffered reasons for its action that a reasonable fact-finder could rationally find them unworthy of credence and then infer that the employer did not act for the asserted non-discriminatory reason. Morgan v. Hilti, Inc. 108, F.3d 1319, 1323, ( \(10^{\text {th }}\) Cir. 1997). To do this, the complainant must have shown that, in spite of the articulated non-discriminatory explanation, an overall inference of discrimination could be discerned by a preponderance of the evidence. U.S. Postal Service Board of Governors v. Aikens, 460 U.S. 711, 714-17 (1983). In other words, the complainant must have shown that the Agency was "more likely motivated by discriminatory reasons. [Citation omitted]" than not. Hill v. Social Security Administration, EEOC Appeal No. 01970512 (June 8, 2000). Or, the complainant could have shown that the proffered explanation of the Agency was unworthy of credence. Texas Department of Community Affairs v. Burdine, 450 U.S. 248, 256 (1981). Essentially, the record must have shown that the Agency articulated a false reason and that its real reason was discrimination. St. Mary's Honor Center v. Hicks, 509 U.S. 502, 515 (1993).

Concerning these issues, the complainant stated that his religion was a factor again, because he is a bible-believing Evangelical Christian who believes Sundays are the Lord's Day and that the entirety of that day is to be set aside as a unique and holy day of worship and rest and that he should be excused from work on this day. (IF, Aff. A, p. 3). He further claimed that his religion was a factor when he received the LOW because the days for which he was disciplined for were Sundays. (IF, Aff. A, p. 7).

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Despite his contentions, there is no indication from any of the documentary or testimony evidence that management was motivated by any discriminatory animus, and to allow the complainant his requested accommodation would be an unfair and undue burden. The Postal Service is a \(24 / 7\) operation and the complainant's position was specifically filled to report to work when the needs of the service dictate it, an agreed upon MOU further dictated that these needs may fall on Sundays.

The complainant's allegations were not supported by the totality of the record and he failed to present any plausible evidence that would have demonstrated that management's reasons for its action were factually baseless or not its actual motivation. Tincher v. Wal-Mart Stores, Inc. and Morgan v. Hilti, Inc., Id. It should be noted that a complainant's subjective beliefs cannot be probative evidence of pretext, and therefore, cannot be the basis of judicial relief. Elliot v. Group Medical \& Surgical Service, 714 F.2d 556, 557 ( \(5^{\text {th }}\) Cir. 1983), cert. denied, 467 U.S. 1215, (1984); see also, Billet v. CIGNA Corp., 940 F.2d 812, 816 ( \(3^{\text {rd }}\) Cir. 1991). The complainant cannot secondguess the wisdom of the agency's business decisions. Thus, agencies are free to discharge, promote, demote, or transfer individuals for any reason, fair or unfair, so long as the decision is not a pretext for discrimination. Damon v. Fleming Supermarkets of Florida, Inc., 196 F.3d 1354, 1361 (11th Cir. 1999); Nix V. WLCY Radio/Rahall Communications, 738 F.2d 1181, 1187 ( \(11^{\text {th }}\) Cir. 1984).

In other words, there was nothing that showed by a preponderance of the evidence that the legitimate explanations given by the agency were pretext for discrimination. Hammons V. HUD, EEOC Request No. 05971093 (May 5, 1999). Hence, the complainant did not show that the explanation of the agency for its action was simply a pretext for discrimination.

\section*{Conclusion}

After carefully considering the entire record, and applying the legal standards outlined in McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973), the evidence does not support a finding that the complainant was subjected to discrimination as alleged. Consequently, this complaint is now closed with a finding of no discrimination.

\section*{Appeal Rights}

\section*{APPEAL TO EEOC}

The complainant has the right to appeal the Postal Service's final decision to the:

\author{
Director, \\ Office of Federal Operations \\ Equal Employment Opportunity Commission (EEOC) \\ P.O. Box 77960 \\ Washington, DC 20013-8960
}

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Gerald Groff
Agency Case Number 4C-170-0051-17
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within 30 calendar days of receipt of this decision. The complainant must use EEOC Appeal Form 573, a copy of which is enclosed, in connection with the appeal. The complainant may also deliver the appeal in person or by facsimile provided that briefs filed by facsimile are ten or fewer pages in length. Any supporting statement or brief must be submitted to the EEOC within 30 calendar days of filing the appeal. Along with the appeal, the complainant must submit proof to the EEOC that a copy of the appeal and any supporting documentation and/or brief were also submitted to the:

\title{
NEEOISO - FAD \\ National EEO Investigative Services Office USPS
}
P. O. Box 21979

Tampa, FL 33622-1979
The complainant is advised that if the complainant files an appeal beyond the 30-day period set forth in the Commission's regulations, the complainant should provide an explanation as to why the appeal should be accepted despite its untimeliness. If the complainant cannot explain why the untimeliness should be excused in accordance with EEOC Regulation 29 C.F.R. \(\S 1614.604\), the Commission may dismiss the appeal as untimely.

\section*{RIGHT TO FILE A CIVIL ACTION}

Alternatively, if the complainant is dissatisfied with the Postal Service's decision in this case, the complainant may file a civil action in an appropriate U.S. District Court within 90 calendar days of receipt of the Postal Service's final decision, within 90 calendar days of the EEOC's final decision on any appeal, or after 180 days from the date of filing an appeal with the EEOC if no final decision has been rendered. If the complainant chooses to file a civil action, that action should be styled Gerald Groff v. Megan J. Brennan, Postmaster General. The complainant may also request the court to appoint an attorney for the complainant and to authorize the commencement of that action without the payment of fees, costs, or security. Whether these requests are granted or denied is within the sole discretion of the District Judge. The application must be filed within the same 90-day time period for filing the civil action.

\section*{Stephanie D. Jahnsan}

Stephanie D. Johnson
EEO Services Analyst
NEEOISO
P. O. Box 21979

Tampa, FL 33622-1979
Enclosure: EEOC Appeal Form 573

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Gerald Groff
Agency Case Number 4C-170-0051-17
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cc:
Complainant
Gerald Groff
New Providence, IN 17560-9680
USPS Tracking No. 9114901496451642753416
Representative
David Crossett, Esq.
8500 Allentown Pike Ste 3
Blandon, PA 19510-9460
USPS Tracking No. 9114901496451642753423

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NOTICE OF APPEAL/PETITION - COMPLAINANT
TO THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
OFFICE OF FEDERAL OPERATIONS
P.O. Box 77960

Washington, DC 20013
Complainant Information: (Please Print or Type)
\begin{tabular}{|l|l|}
\hline Complainant's name (Last, First, M.I.): & \\
\begin{tabular}{l|l|}
\hline Home/mailing address: & \\
\hline City, State, ZIP Code: & \\
\hline Daytime Telephone \# (with area code): & \\
\hline E-mail address (if any): & \\
\hline
\end{tabular} l \\
\hline
\end{tabular}

Attorney/Representative Information (if any):
\begin{tabular}{|l|l|}
\hline Attorney name: & \\
\hline Non-Attorney Representative name: & \\
\hline Address: & \\
\hline City, State, ZIP Code: & \\
\hline Telephone number (if applicable): & \\
\hline E-mail address (if any): & \\
\hline
\end{tabular}

General Information:
Name of the agency being charged with discrimination:
Identify the Agency's complaint number:
Location of the duty station or local facility in which the complaint arose:
Has a final action been taken by the agency, an Arbitrator, FLRA, or MSPB on this complaint?
\begin{tabular}{|c|}
\hline \(\qquad\) Yes; Date Received \(\qquad\) (Remember to attach a copy)
\(\qquad\) No
\(\qquad\) This appeal alleges a breach of settlement agreement \\
\hline \(\qquad\) No
\(\qquad\) Yes (Indicate the agency or procedure, complaint/docket number, and attach a copy, if appropriate) \\
\hline \(\qquad\) No
\(\qquad\) Yes (Attach a copy of the civil action filed) \\
\hline
\end{tabular}

NOTICE: Please attach a copy of the final decision or order from which you are appealing. If a hearing was requested, please attach a copy of the agency's final order and a copy of the Commission Administrative Judge's decision. Any comments or brief in support of this appeal MUST be filed with the EEOC and with the agency within 30 davs of the date this appeal is filed. The date the appeal is filed is the date on which it is postmarked, hand delivered, or faxed to the Commission at the address above.

Please specify any reasonable accommodations you will require to participate in the appeal process:
\begin{tabular}{l|l|}
\hline & \\
\hline Signature of complainant or \\
complainant's representative: \\
\hline Date: \\
\hline Method of Service on Agency: \\
\hline Date of Service: \\
\hline EEOC Form 573 REV 2/09 & \\
\hline
\end{tabular}

EEOC Form 573 REV 2/09

\section*{PRIVACY ACT STATEMENT}
(This form is covered by the Privacy Act of 1974. Public Law 93-597. Authority for requesting the personal data and the use thereof are given below.)
1. FORM NUMBER/TITLE/DATE: EEOC Form 573, Notice of Appeal/Petition, February 2009
2. AUTHORITY: 42 U.S.C. § \(2000 \mathrm{e}-16\)
3. PRINCIPAL PURPOSE: The purpose of this questionnaire is to solicit information to enable the Commission to properly and effectively adjudicate appeals filed by federal employees, former federal employees, and applicants for federal employment.
4. ROUTINE USES: Information provided on this form may be disclosed to: (a) appropriate federal, state or local agencies when relevant to civil, criminal, or regulatory investigations or proceedings; (b) a Congressional office in response to an inquiry from that office at your request; and (c) a bar association or disciplinary board investigating complaints against attorneys representing parties before the Commission. Decisions of the Commission are final administrative decisions, and, as such, are available to the public under the provisions of the Freedom of Information Act. Some information may also be used in depersonalized form as a data base for statistical purposes.
5. WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION: Since your appeal is a voluntary action, you are not required to provide any personal information in connection with it. However, failure to supply the Commission with the requested information could hinder timely processing of your case, or even result in the rejection or dismissal of your appeal.

\author{
You may send your appeal to: \\ The Equal Employment Opportunity Commission \\ Office of Federal Operations \\ P.O. Box 77960 \\ Washington, D.C. 20013
}

Fax it to (202) 663-7022 or submit it through the Commission's electronic submission portal.

\title{
CORNERSTONE LAW FIRM \\ 8500 Allentown Pike, Suite 3 \\ Blandon, PA 19510
}

January 18, 2018

\section*{RECEIVED}

FADS
JAN 222018
National EEO Investigative Services
NEEOISŌ
P.O. Box 21979

Tampa, FL 33622

\section*{Re: Gerald E. Groff \\ Agency Case No.: 4C-170-0051-17}

To Whom It May Concern:
Be advised that this firm represents Mr . Groff in the above matter. I am hereby requesting a file agency decision without a Hearing on the above matter. Please contact me should you have any questions.

Very truly yours,
CORNERSTONE LAW FIRM, LLC


DWC/aee
cc: Client (via email)


\section*{FADS}

National EEO Investigative Services P.O. Box 21979

Tampa, FL 33622


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UNITED STATES
EEO Complaint of Discrimination in the Postal Service POSTAL SERVICE
(See Instructions and Privacy Act Statement on back of form.)

16. Explain the specific action(s) or situation(s) that resulted in you alleging that you were diserminated agalnst (treated differently than other employees or applicants) because of your race, color, rellighon, sex, age ( \(40+1\), national origing genetic informaton, disability, or retaliation for participation in a protected EEO activity. Note that If your aflegotion Is similor or related to a previous complaint, that complolint may be amended. 29 CF.R. 5 1614.106(d). Please use odditional pages If nectssary.
on January Z, 2018, brian hess (postmaster) issued a seven day paper susfensian (CO-SIGNED BY KEITH KREMPA, POOM) ALLEGING IMPROPER CONRUCT FOR DECLINING TO WORK ON Tho Sundays ( \(12 / 3+12 / 17\), aC17) DUE TO MY CHRISTIAN REMGOUS BELEF THAT I MUST NOT WORK ON THE LORO'S DAY (SNNDAY). BRIAN IS AWARE OF MY FAITH, BUT /NSISTEDI ALUST WORK ON Sundays as Assigned. I TOLD HIM I COULD NOT REPORT AFTER EHRRCH, FOR THE VENY ESSENLE OF MY BELIEFIS TO KEDP THE ENTIRE LORD'S AAY ON SUNDAYS -NOT JUST PART OFIT. THE USPS HAS MANDATED I WORK ON SLNDAYS TO MEET THER SAFAFING DEMAMDS BEFORE
 17. What remedy are you seeking io resolve this complaint?
(1) AN ACCOMMODATION TO NOT WORK ON SUNDAYS AT ALL OR TRANSFER TO A POSTTION WITIIIN THE USPS THAT DIES NOT RELUIRE SUNDAY WORK.

> 18. Did you discuss your complant with an EED Alternative Dispute Resohtion ADDP) Spectalist or a REOnESS Mectianor?
Yes Dute you recelved the Notice of final interiem: y-23-2018
\(\square\) No


Gerald Goff
4C.170-0030-18

This notice will attest to the fact that on_Aprill 19, 2018 I advised you of the actions taken concerning the alleged discrimination that you brought to my attention. If the matters that you raised during the pre-compiaint processing stage have not been resolved, you have the right to file a formal complaint within 15 calendar days of the date you receive this notice. If you decide to file a formal complaint, your complaint must be put in writing and signed by you or your attorney, it you retained one to represent you. I am providing you with PS Form 2565, EEO Complaint of Discrimination in the Postal Service, for this purpose. Your complaint must be mailed or delivered to:
```

NEEOISO - Formal Complaints
U.S. POSTAL SERVICE
P.O. BOX 21979
TAMPA, FL 33622-1979

```

Your complaint will be deemed timely filed if it is received at this address before the expiration of the 15 -day filing period, or if it bears a postmark that is dated before the expiration of the hing period. in the absence of a legible postmark, it must be received by mall within 5 calendar days of the expatiation of the filing period.

An EEO discrimination complaint can be processed only if the complainant alleges he or she has been discitminated against on the basis of race, color, religion, sex (male, female), sex (LGBT), national origin, age ( \(40+1\), disability, genetic information, or retaliation for participation in protected EEO activity. In addition, courts have ruled the complainant has the burden of presenting evidence which would give rise to an inference of discrimination. A complaint must contain the following information:
(1) Your name, address, position, and level;
- If you change your address, you have a regulatory requirement to immediately report the change to the address below. NEEOISO-EEO Contact Center, U.S. Postal Service, P.O. Box 21979. Tampa, FL 33622-1979
(2) The specific action or matter complained of, the dale of occurrence, and the names of the officials) who took the alleged discriminatory action at issue in this complaint;
(3) The specific type of discrimination alleged, (ecg., race - African American, sex - female);
- If you allege age discrimination. you must have been at least 40 years of age on the date the alleged discriminatory action occurred.
(4) Abrief statement of the facts that led you to believe you were discriminated against and the names of similarly situated individuals whom you RECEMSalueve were treated differently than you.

- If you allege retaliation, you must show a connection between the action about which you are complaining and your participation in protected JुEO activity. You also must show when the alleged discriminatory action at issue in this complaint occurred, the management official who took the action was aware that you had previously engaged in protected EEO activity.
(5) The name of the EEO Altemstive Dispute Resolution Specialist who provided you with this notice and the date you received this Notice of fight to Fie.

Privacy Act Statement: Your information wild be used to adjudicate complaints of alleged discrimination and to evaluate the effectiveness of the EEO program. Collection is authorized by 39 U.S.C. 401, 409, 410, 1001, 1005, and 1206. Providing the information is voluntary, but if not provided, wo may not be able to process your request. Wo may disclose your information as follows: in relevant legal proceedings: to law enforcement when the U.S. Postal Service \({ }^{\text {er }}\) (USPS \({ }^{3 / 4}\) ) or requesting agency becomes aware of a violation of law: to a congressional office at your request: to entities or individuals under contract with USPS; to entities authorized to perform audits: to labor organizations as required by law; to federal, state, local or foreign government agencies regarding personnel matters; to the Equal Employment Opportunity Commission; and to the Mart Systems Protection Brand or Office of Special Courses. For more information regarding our privacy policies, visit www, usps. com/erivacypaticy.

Signature of EEO Alternative Dispute Resolution Specialist


Date issued
Apr 19, 2018

Rehabilitation Act Notices: Under the Rehabilitation Act, medical information is comflidemtial and may only be requested or disclosed in very fruited cdrcurrstances. Medical documentation about the complainant's and possible comparison employees" medical conditions and work restrictions may be requested in connection with the investigation of an EEO complaint. Information about medicaid restrictions (but not medical conditions) obtained in the course of an EEO investigation may be disclosed to supervisors and managers who need to know about restrictions on the work or duties of the employee and about necessary accommodations. Supervisors and managers are not permitted to share such information with peers or subordinates or to discuss the information with those who have ne need to know end whose rocuests for the information are not job-related and consistent whit h business necessity.

Alternative Dispute Resolution Specialist; H you are mailing this notice, you must send it by Priority Mall o, Signature Confirmation \({ }^{\text {Tu }}\) delivery. PS Form 2579-A, October 2015

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\begin{tabular}{|c|c|c}
\hline Page No. & No. Pages & Case No. \\
1 & 14 & \(4 C-170-0030-18\)
\end{tabular}
\begin{tabular}{|l|l|}
\hline \begin{tabular}{|l|l|}
\hline 1. Affiant's Name (Last, First, MI) \\
Groff, Gerald
\end{tabular} \\
\hline 3. Position Title & 4. Grade Level \\
Rural Carrier Associate & H-OSN \\
\hline
\end{tabular}
\begin{tabular}{|c|c|}
\hline \multicolumn{2}{|l|}{2. Employing Postal Facility Holwood Post Office} \\
\hline 5. Postal Address and Zip +4 55 Drytown Road Holtwood, PA 17532-9998 & 6. Unit Assigned CUSTOMER SERVKE \\
\hline
\end{tabular}

\section*{Freac: Ant Notice}

Privacy Act Motice. The collection of this information is authortzed by the Equat Employment Opportunity act of 1972, 42 U.S.C. \(\$ 2000\) e-16: the Aga Discrimination in Employment Act of 1967, as amended, 29 U.S.C. \(\$ 633\) : the Rehabititation Act of 1973. as amended. This information will be used to adjudicate complaints of alieged discrimination and to evaluate the effectiveness of the EEO program. As a routhe use. this inlormation may be disclosed to an appropniate government agency. domestic or foreign, for law enforcoment purposes; where pertinent, in a legal proceeding to which the USPS is a party or has an inderest; to a govemment agency in order to obtain information relevant to a USPS decision concerning employment. securty chearances, contracts, licenses, grants. permits or other benefits; to a govemment agency upon its request when relevant to its decrsion conceming employment, security dearances, security or sutability investigations, contracts, licenses. grants or other benefits:
to a congrestional ofice ait your request; to an expent, consument, of other person under contract with the USPS to fulill an agency function: to the Federal Records Center for storage; to the Office of Management and Budget for feview of privste relief legistation; to an independent cestified putblic accountant during an oficial audi of USPS financess; to an investigator, adrininistrative judge or complaints examiner appointed by the Equal Employment Opportunity Commission for Investigation of a formal EEO complaint under 29 CFR 1614; to the Marit Systems Protection Board or Office of Special Counsel for procaedings or inveatigations involving personnel practices and other maters within their jurisdiction; and to a labor organization as required by the National Labor Relations Act Under the Privacy Act provision, the information requested is voluntary for the complainant, and for Postal Service employees and other winesses

\section*{Important Information Regarding Your Complaint}

This PS Form 256B-A. EEO Investigative Affidevit (Complainant), and the oner form mentroned below, are being provided for you to use to fully respond to the accompanying questions. Mail or deliver your completed staternent to the EEO Complaints investigator within 15 catendar days of the date you recerved the forms. Use PS Form(s) 2569. EEO Investigative Affidavt (Continuation Sheet), as needed. to complete your written statement. Remember to number the top of each page and sign and date the bottom of asch page of your statement. Hyou refurn your statement by mail, the return envelope must be postmarked on or before the \(15^{\circ}\) calendar day after the dete that you recorived the affirdavit forms.

Failure to complete your statement and return the forms within the allotted time period could result in your complainf being dismissed Dased upon your faiture to proceed. EEOC comploints processing regulation. 29 C.F.R. 1614.107 (a)(7), states, in part. [A complaint may be dismissed) Where the agency has provided the complainant with the writen request to prowide retevant information or otherwise proceed with the complaint, and the complainam has failed to respond to the request within 15 days of its receipt. or the complainant's response does not address the agency's request prowided that the request included a notice of the proposed dismissal."

Statament (Continue on Form 2569 of additional space is required. Form will atho-create of using Microsofl Ward)
1. If you have a representative, please provide their full name. address, telephone number and E-mail address and identify whether or not they are an attomey
RESPONSE:
```

DAVID W. CROSSETT, ESQ.
8500 ALLENTOWN PIKE, SUITE 3
BLANDON. PA 19510-9460
610-926-7875
david@cornerstonelaw.us
ATTORNEY-AT-LAW

```
2. Please state your full name, current mailing address, work and personal telephone numbers and e-mail address. RESPONSE:

GERALD E. GROFF
NEW PROVIDENCE, PA 17560
EMAIL: N/A

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

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3. What was your position title, pay grade and your work location, city, state and zip code, during the time period in this complaint (January 16, 2018 and March 6, 2018)?
RESPONSE:
RURAL CARRIER ASSOCIATE; H-05/Y; HOLTWOOD POST OFFICE, HOLTWOOD, PA 17532
4. Please provide the names your first and second level supervisors at the time of the alleged incidents in this complaint? Identify each by full name, position title, work location, telephone number and e-maii address. RESPONSE:

BRIAN M. HESS. POSTMASTER; HOLTWOOD POST OFFICE. HOLTWOOD, PA 17532; 717-284-2850; brian.m.hess@usps.gov I AM NOT AWARE OF ANY FURTHER LEVEL OF SUPERVISION.

\section*{RELIGION ALLEGATION}
5. Please state your religion. RESPONSE:

EVANGELICAL CHRISTIAN
6. Was the management official(s) who allegedly discriminated against you aware of your religion during the relevant time period in this complaint? If so, identify how and when (approximate date) each management official became aware of your religion.
RESPONSE:
YES, BRIAN WAS CLEARLY AWARE OF MY CHRISTIAN FAITH. I AM SURE I MENTIONED MY FAITH IN CASUAL CONVERSATION SINCE MY HIRE IN AUGUST 2016. I AM POSITIVE THAT I MADE BRIAN AWARE OF MY FAITH AND MY DESIRE TO KEEP THE LORD'S DAY WHEN THE ISSUE OF SUNDAY AMAZON DELIVERY CAME TO OUR AREA IN MARCH 2017.

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


PS Form 2569. March 2001
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CLAIM 1: YOU WERE ISSUED A SEVEN (7) DAY SUSPENSION
7. You allege that you received a seven (7) day suspension. On what date did you receive the suspension. RESPONSE:

THE SUSPENSION PAPERWORK IS DATED JANUARY 2, 2018. I SIGNED IT AS RECEIVED ON JANUARY 16, 2018.
a. What offense were you charged with?

RESPONSE:

IMPROPER CONDUCT
8. Please identify the management official(s) by full name, position tite, work location, telephone number and e-mail address that you allege is responsible for issuing you the you the seven (7) Day Suspension RESPONSE:

BRIAN M. HESS, POSTMASTER; HOLTWOOD POST OFFICE, HOLTWOOD, PA 17532; 717-284-2850; brian.m.hess@usps.gov
9. Do you feel that any other management official(s) was involved in the decision? If so, identify each by full name, position title, telephone number and work location and explain how he/she was involved. RESPONSE:

YES. KEITH R. KREMPA, MANAGER, POST OFFICE OPERATIONS; Keith.R.Krempa@usps.gov; WORK LOCATION UNKNOWN; HE SIGNED THE SUSPENSION LETTER THAT I WAS GIVEN AS "HIGHER LEVEL CONCURRENCE" ON JANUARY 11, 2018.

Ideclare under penalty of perjury that the foregoing is true and correct.
Afiant's Signature

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EEO Investigative Affidavit (Continuation Sheet)
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10. Were you given an Investigative Interview? If so please state the date it was given and who conducted \\
the interview. \\
RESPONSE:
\end{tabular}

DECEMBER 20, 2017; BRIAN M. HESS CONDUCTED THE INTERVIEW.
11. Were you informed of the reason that an investigative interview was being conducted? If so, what reason were you given and by whom?
RESPONSE:
YES; I WAS TOLD THAT I WAS BEING GIVEN A PRE-DISCIPLINARY INTERVIEW BECAUSE OF MY REFUSAL TO WORK ON TWO SUNDAYS AS SCHEDULED (DECEMBER 3 AND 17, 2017). BRIAN TOLD ME THIS BEFORE (VIA LETTER) AND VERBALLY DURING THE INTERVIEW ON DECEMBER 20, 2017.
12. What led to you being issued the seven (7) day suspension? RESPONSE:
I BELIEVE THERE IS MORE TO THIS SITUATION THAN JUST A SIMPLE LACK OF ATTENDANCE ON THOSE TWO SUNDAYS AS SCHEDULED. WE HAD THREE RURAL CARRIER ASSOCIATES AT THAT TIME--SHEILA MOYER, JUSTIN TEKELEY, AND MYSELF. FOR WEEKS BEFORE CHRISTMAS (WHEN THE SUNDAY DELIVERIES BEGAN AT OUR OFFICE) WE HAD DISCUSSED THAT I WANTED TO KEEP THE LORD'S DAY BY NOT WORKING ON SUNDAYS. SHEILA IS NOT A CHRISTIAN, AS I UNDERSTAND IT, AND SHE VOLUNTEERED TO COVER ANY SUNDAY THAT I WAS SCHEDULED, BUT SHE WAS INJURED WHILE WORKING AT THE STRASBURG POST OFFICE AND WENT OUT ON DISABILITY. WHICH LEFT ONLY JUSTIN AND MYSELF TO BE SCHEDULED ON SUNDAYS AT HOLTWOOD. SINCE HIS HIRE IN APRIL 2017, JUSTIN HAD WORKED SUNDAYS AS ASSIGNED AT THE LANCASTER HUB OFFICE. UNLIKE JUSTIN, HOWEVER, I HAD REQUESTED A REASONABLE ACCOMMODATION TO BE EXEMPT FROM (CONTINUED)
13. Were you informed of the reason that you were issued a seven (7) day suspension? If so, what reason were you given and by whom?
RESPONSE:

YES; THE SUSPENSION PAPERWORK LISTS A NUMBER OF REASONS FROM THE EMPLOYEE MANUAL REGARDING DISCHARGE OF DUTIES, OBEDIENCE TO ORDERS, AND BEHAVIOR AND PERSONAL HABITS. BRIAN VERBALLY EXPLAINED TO ME THAT THIS GENERALLY MEANT I WAS PUNISHED FOR REFUSAL TO OBEY ORDERS BY REPORTING FOR DUTY AND FOR THE DISRUPTION I WAS CAUSING IN THE HOLTWOOD POST OFFICE BY NOT DOING MY SHARE OF THE SUNDAY WORK LOAD WHILE JUSTIN HAD TO WORK.


Affidavit A

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14. Did you agree with the reason provided? If not, why not? RESPONSE:

I DO NOT AGREE WITH THE REASONS PROVIDED BY BRIAN AND I TOLD HIM SO DURING THAT TIME. HIS REASONS MAKE IT APPEAR THAT I WAS BELLIGERENT AND REBELLIOUS IN NATURE--REFUSING HIS ORDERS AND CAUSING A HUGE PROBLEM IN THE OFFICE. IN FACT, HE KNEW EXACTLY WHY I WAS NOT ABLE TO WORK SUNDAYS AS ASSIGNED BECAUSE OF MY FAITH, AND I HAD ALWAYS BEEN ABSOLUTELY HUMBLE AND FORTHRIGHT WITH HIM ABOUT MY BELIEFS AND REASONS FOR DOING SO, AND HE ALSO KNEW THIS WAS THE STAND I HAD MADE SINCE MARCH 2017 WHEN DEALING WITH THE LANCASTER HUB OFFICE AS WELL.
15. Why do you believe that your religion was a factor when you were given a seven (7) day suspension? RESPONSE:

I AM A CONFESSING CHRISTIAN WHO BELIEVES THE BIBLE SAYS WE ARE TO HONOR THE LORD'S DAY ON SUNDAYS. IT IS TO BE A UNIQUE AND HOLY DAY WHERE WE SET ASIDE OUR JOBMORK TO INSTEAD WORSHIP THE LORD AND REST THE ENTIRE DAY. TO THIS END, I HAVE REQUESTED THE POSTAL SERVICE accommodate my faith and request To keep The sabbath in its entirety, but they have not DONE SO THUS FAR. SUBSEQUENTLY. I DECLINED WORK ON DECEMBER 3 AND 17, 2017 IN ORDER TO KEEP THE LORD'S DAY (AS I HAVE MAINTAINED ALL ALONG) AND BRIAN ISSUED THIS DISCIPLINE.

16 Are you aware of any other employee with the same position title and grade as you that were treated the same as you (i.e instructed to work on Sundays)? If so, please provide the following:
a. Their full name, position title, grade level and work location RESPONSE:
JUSTIN TEKELEY; RURAL CARRIER ASSOCIATE; GRADE LEVEL UNKNOWN: JUSTIN USED TO WORK AT THE HOLTWOOD POST OFFICE, BUT HAS SINCE TRANSFERRED TO STRASBURG, PA OFFICE.

SHEILA MOYER; RURAL CARRIER ASSOCIATE: GRADE LEVEL UNKNOWN; SHEILA USED TO WORK AT THE HOLTWOOD POST OFFICE, BUT HAS SINCE LEFT THE POSTAL SERVICE.
b. Their Supervisor/Manager's name RESPONSE:

WHILE AT THE HOLTWOOD POST OFFICE, BOTH SHEILA AND JUSTIN WERE SUPERVISED BY BRIAN HESS. POSTMASTER.

\section*{Ideclare under penalty of perjury that the foregoing is true and correct.}


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c. Their religion

RESPONSE
JUSTIN: CHRISTIAN
SHEILA: NON-CHRISTIAN
17. Are you aware of any other employee with the same position title and grade as you that were treated more favorably than you (i.e. who were not instructed/required to work on Sundays)? If so, please provide the following:
a. Their full name, position title, grade level and work location RESPONSE:
JUSTIN TEKELEY AND SHEILA MOYER (SEE DETAILS ABOVE): BRIAN APPEARED TO TREAT JUSTIN AND SHEILA MORE FAVORABLY THAN MYSELF BECAUSE OF THEIR WILLINGNESS TO DO SO. FOR EXAMPLE, ON OCTOBER 10. 2017 (DAY AFTER COLUMBUS DAY HOLIDAY) JUSTIN, SHEILA. AND I WERE ASSIGNED TO COVER THREE RURAL ROUTES AT HOLTWOOD. THE MAIL \& PACKAGES WERE OVERWHELMING THAT DAY. BRIAN FILLED HIS VEHICLE MULTIPLE TIMES WITH PARCELS TO MAKE MORE THAN ONE TRIP TO HELP BOTH JUSTIN AND SHEILA THAT DAY, BUT DID NOT OFFER ME ANY HELP. I HAD TO WORK OVER EVALUATION THAT DAY, BUT THEY BOTH GOT AN EASIER WORK DAY. BRIAN REPEATEDLY DID THIS TYPE OF BEHAVIOR, PARTICULARLY WITH HELPING JUSTIN, TO THE POINT THAT EVEN MY FULL TIME CO-WORKERS MADE COMMENTS ABOUT THE SPECIAL TREATMENT JUSTIN WAS RECEIVING FROM BRIAN AT TIMES.
b. Their Supervisor/Manager's name RESPONSE:

BRIAN HESS, POSTMASTER
c. Their religion

RESPONSE:
JUSTIN: CHRISTIAN
SHEILA: NON-CHRISTIAN

\section*{I declare under penatity of perjury that the foregoling is true and correct.}


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UNITEDSTATES
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d. Please explain the reason that you believe they were not required to work on Sundays RESPONSE:
JUSTIN AND SHEILA WERE REQUIRED TO WORK SUNDAYS AND DID SO, BUT ALSO SEEMED TO BE TREATED MORE FAVORABLY BY BRIAN, OUR SUPERVISOR, ACCORDINGLY.

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18. Did you file a grievance on this issue? If so, what is the status? Please provide a copy of the grievance documentation.
RESPONSE:
NO, I DID NOT FILE A GRIEVANCE.
19. What Postal Service policies, rules, or regulation are relevant to this claim? Was the policy you identified in this response violated? If so, please explain how. Please provide a copy of the policy.

THE UNITED STATES POSTAL SERVICE'S EQUAL EMPLOYMENT OPPORTUNITY POLICY; YES, I WOULD SUGGEST I AM BEING DISCRIMINATED AGAINST FOR MY RELIGIOUS STANCE TO KEEP THE LORD'S DAY BY NOT BEING ACCOMMODATED BY THE POSTAL SERVICE, AND TO SOME DEGREE, BRIAN HAS BEEN HARASSING ME BY TREATING ME LESS FAVORABLY THAN MY CO-WORKERS BECAUSE THEY ARE WILLING TO WORK ON SUNDAYS AND I AM NOT BECAUSE OF MY FAITH. (SEE ATTACHED POLICY COPY)

CLAIM 2: YOU HAVE NOT RECEIVED A RESPONSE TO YOUR REQUEST FOR RELIGIOUS ACCOMMODATION
20. You allege that you requested a religious accommodation and have not received a response.

On what date did you request a religious accommodation? RESPONSE:

MY INITIAL REQUEST FOR RELIGIOUS ACCOMMODATION WAS DATED JANUARY 4, 2018. WHEN THAT REQUEST WAS UNSUCCESSFUL, I SUBSEQUENTLY SUBMITTED A NEW REQUEST FOR ACCOMMODATION ON MARCH 6, 2018, WHICH HAS ALSO BEEN UNSUCCESSFUL THUS FAR.

Ideclare under penalty of perjury that the foregoing is true and correct.
Affiant's Signature \(\quad(Q<a<1 / 2 c+1]\)

PS Form 2569, March 2001

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21. Please provide the name of the supervisor or manager that you submitted your request for a reasonable accommodation.
RESPONSE:
IN BOTH CASES, MY REQUESTS WERE SUBMITTED TO BRIAN HESS, MY SUPERVISOR, WHO THEN FORWARDED THEM ON TO THE APPROPRIATE POSTAL DEPARTMENTS.
22. What was the specific religious accommodation that you requested? RESPONSE:
in THE FIRST REQUEST, I ASKED TO EXEMPTED FROM SUNDAY AMAZON DELIVERY ALTOGETHER IN AN EFFORT TO KEEP THE LORD'S DAY IN ITS ENTIRETY-TO NOT BE SCHEDULED AT ALL ON SUNDAYS. THE SECOND REQUEST ASKED FOR A LATERAL TRANSFER WITHIN THE POSTAL SERVICE TO A POSITION THAT DID NOT REQUIRE WORK ON SUNDAYS AT ALL.
23. Have you made your supervisor(s) or any other management official(s) aware of your religious beliefs and requirements? If yes, whom did you make aware and when? RESPONSE:

YES: ALL OF THE MANAGEMENT INVOLVED IN MY CASE SINCE MARCH 2017 ARE AWARE OF MY BELIEFS. THESE INCLUDE THE FOLLOWNG: BRIAN HESS (HOLTWOOD POSTMASTER), DIANE EVANS (LANCASTER HUB SUPERVISOR), AARON ZEHRING (LANCASTER HUB STATION MANAGER), DOUG FRENCH (LANCASTER HUB POSTMASTER). TREVA MORRIS (LANCASTER HUB SUPERVISOR). THE WERE ALL MADE AWARE OF MY BELIEFS DURING THE COURSE OF PRE-DISCIPLINARY INTERVIEWS AND RELATED CONVERSATION BETWEEN MARCH 2017 AND PRESENT. IN ADDITION, MY FORMER POSTMASTERS (PATRICIA WRIGHTQUARRYVILLE POSTMASTER) AND ANDREA ECKERT (RONKS POSTMASTER) KNOW MY BELIEFS CLEARLY.
a. What was management's response to your request or a religious accommodation? RESPONSE:

IN RESPONSE TO MY INITIAL REQUEST TO BE EXEMPT FROM WORK ON SUNDAYS AT ALL, I WAS TOLD I COULD COME IN AFTER CHURCH SERVICES WERE COMPLETED IN THE MORNING AND DO MY WORK. MY REQUEST WAS TO KEEP THE LORD'S DAY IN ITS ENTIRETY WITHOUT WORKING, SO I DID NOT CONSIDER THIS A REASONABLE ACCOMMODATION AND DECLINED THAT OFFER. THERE HAS BEEN NO RESPONSE TO MY SECOND REQUEST FOR LATERAL TRANSFER WTHIN THE POSTAL SERVICE.

Ideclare under penality of perjury that the foregoing is true and correct.


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24. Have you provided religious documentation from your Clergy which identifies your religious work restrictions on Sundays? If so, to whom and when did you provide this documentation? RESPONSE:

NO. I HAVE NOT PROVIDED DOCUMENTATION FROM A MEMBER OF CLERGY FOR TWO REASONS: A) SUCH DOCUMENTATION WAS NEVER REQUESTED FROM POSTAL MANAGEMENT AS NECESSARY: AND B) MY BELIEF TO KEEP THE LORD'S DAY IN ITS ENTIRETY IS NOT A MATIER OF MY PASTOR'S BELIEF, INTERPRETATION, OPINION, OR TEACHING, BUT RATHER WHAT THE BIBLE/GOD'S WORD INSTRUCTS AS IMPORTANT TO HONOR THE LORD HIMSELF AND HIS PURPOSES FOR MY LIFE. IT IS A MATTER OF CONSCIENCE TO ME TO OBEY GOD AND HIS WORD FIRST AND FOREMOST.
25. Did you request to appear before the District Reasonable Accommodation Committee (DRAC)? If so, to whom and when did you make the request? RESPONSE:

NO. I WAS NEVER MADE AWARE THAT SUCH A COMMITTEE EXISTED WITHIN THE POSTAL SYSTEM. I HAVE SINCE LEARNED THAT MY SECOND REQUEST FOR ACCOMMODATION OF LATERAL TRANSFER WAS SUBMITTED TO THIS COMMITTEE BY THE DISTRICT MANAGER OF LABOR RELATIONS, LYLE GAINES.
a. Please provide a copy of the accommodation request (including attachments), if it was in writing. If the request was verbal, please state so, and indicate to whom the request was made and when. RESPONSE:

SEE ATTACHED COPIES OF BOTH REQUESTS MENTIONED: SUBMITTED ON BOTH OCCASIONS TO BRIAN HESS, POSTMASTER AT HOLTWOOD POST OFFICE.

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

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\section*{EEO Investigative Affidavit (Continuation Sheet)}

\section*{26. Did you appear before DRAC? If so, when? If not, was there a reason you did not appear? RESPONSE:}

NO, I HAD NO IDEA THE DRAC EXISTED OR WAS AN OPTION FOR ME. I WAS NEVER INFORMED BY POSTAL MANAGEMENT AT ANY TIME THAT THIS WAS AN OPTION.
a. Did you receive a response from the DRAC? If so, when? RESPONSE:

N/A
b. Please provide a copy of the response. If the response was verbal, please indicate what you were told, by whom and when. RESPONSE:

N/A

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

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27. Have you been offered an accommodation for your religion? If so, what was offered? RESPONSE:

AS STATED PREVIOUSLY, POSTAL MANAGEMENT DID OFFER TO LET ME COME IN TO WORK ON SUNDAYS AFTER CHURCH, BUT THAT MISSED THE POINT OF MY REQUEST TO BE EXEMPTED FROM WORK AT ALL ON SUNDAYS IN ORDER TO KEEP THE LORD'S DAY IN ITS ENTIRETY AS IS MY STATED BELIEF. AARON ZEHRING (LANCASTER HUB OFFICE STATION MANAGER) VERBALLY SUGGESTED THE IDEA OF TAKING ANOTHER DAY DURING THE WEEK AS MY SABBATH INSTEAD, BUT THAT OFFER WAS NEVER MADE TO ME FORMALLY. I WOULD'VE ALSO DECLINED THAT OFFER. AS I DID TO HIM THAT DAY, SIMPLY BECAUSE SUNDAY ITSELF IS SIGNIFICANT TO CHRISTIANS FOR CHURCH ATTENDANCE, FELLOWSHIP, ETC. AND CANNOT BE REPLICATED ON A WEEKDAY.
a. If you answered yes did you regard the offered accommodation as effective? If not, why not? RESPONSE:

I DID NOT ANSWER YES FOR REASONS STATED ABOVE.
28. Why do you believe that your religion was a factor when you did not receive a response to your request for a religious accommodation?
RESPONSE:

AS STATED PREVIOUSLY, I HAVE MADE TWO REQUESTS TO POSTAL MANAGEMENT FOR ACCOMMODATION OF MY RELIGIOUS BELIEFS. IT IS CLEAR TO ME THAT FEDERAL LAW (CIVIL RIGHTS ACT, FOR EXAMPLE) AND THE POSTAL SERVICE'S OWN POLICIES OF EQUAL EMPLOYMENT PROTECTION AND THE "NO FEAR ACT" PROVIDE FOR REASONABLE ACCOMMODATION OF ONE'S RELIGIOUS BELIEFS AND FOR PROTECTION FROM DISCRIMINATION AND HARASSMENT DURING THE COURSE OF ONE'S WORK DUTIES. HOWEVER, I CONTINUE TO BE DENIED ACCOMMODATION FROM MANAGEMENT, AND I WOULD SUGGEST THAT I HAVE FACED BOTH HARASSMENT AND DISCRIMINATION FROM MY SUPERVISOR, BRIAN HESS, AS EXPLAINED ELSEWHERE. I BELIEVE THE POSTAL SERVICE IS UNWILLING TO ACCOMMODATE ME, PERHAPS BECAUSE THEY DO NOT BELIEVE AS I DO AS A CHRISTIAN AND DO NOT RESPECT MY FAITH. THE FACTS STAND, HOWEVER, THAT THE LETTER OF THE LAW HAS NOT BEEN HONORED IN MY SITUATION, AND I MUST CONCLUDE IT IS OUT OF DISRESPECT FOR MY RELIGIOUS BELIEFS.

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


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29. Are you aware of any other employee with the same position title and grade as you that were treated the same as you (i.e. did not receive a response to their request for a religious accommodation)? If so, please provide the following:
a. Their full name, position title, grade level and work location RESPONSE:

LISA NEWSWANGER; RURAL CARRIER ASSOCIATE; GRADE LEVEL UNKNOWN; CHRISTIANA, PA POST OFFICE. SHE HAS SINCE RESIGNED, AND I AM UNAWARE IF SHE SUBMITTED A FORMAL REQUEST FOR RELIGIOUS ACCOMMODATION, BUT I KNOW SHE STATED HER REASON FOR HER RESIGNATION WAS DUE TO THE MANDATORY SUNDAY AMAZON DELIVERY AND THE RESPECT OF HER FAITH.
b. Their Supervisor/Manager's name RESPONSE:

UNKNOWN
c. Their religion

RESPONSE:
I DON'T KNOW HER PERSONALLY TO BE CERTAIN.

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


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UNITED STATES POSTAL SERVICE:
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30. Are you aware of any other employee with the same position title and grade as you that were treated more favorably than you (i.e. who received a response a response to their request for a religious accommodation and/or their request was granted)? If so, please provide the following:
a. Their full name, position title, grade level and work location RESPONSE:

NO, I AM NOT AWARE OF ANYONE IN THIS SITUATION.
b. Their Supervisor/Manager's name RESPONSE:

\section*{N/A}
c. Their religion

RESPONSE

N/A
d. Please explain the reason that you believe they were treated more favorably in regards to their request for a religious accommodation. RESPONSE

N/A

I declare under penality of perjury that the foregoing is true and correct
Affiant's Signature

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31. Did you file a grievance on this issue? If so, what is the status? Please provide a copy of the grievance documentation. RESPONSE:

NO GRIEVANCE WAS FILED.
32. What Postal Service policies, rules, or regulation are relevant to this claim? Was the policy you identified in this response violated? If so, please explain how. Please provide a copy of the policy.

THE CIVIL RIGHTS ACT REQUIRES REASONABLE ACCOMMODATION BY EMPLOYERS FOR AN EMPLOYEE'S REQUEST FOR RELIGIOUS ACCOMMODATION. THE POSTAL SERVICE'S OWN EQUAL. EMPLOYMENT OPPORTUNITY POLICY AND "NO FEAR ACT" COMPLIANCE ALSO PROVIDE FOR MY REQUEST TO BE HONORED. I BELIEVE A LACK OF ANY RESPONSE IS, IN EFFECT, THE SAME AS A CHOICE TO NOT MAKE ACCOMMODATION AT ALL FOR MY RELIGIOUS BELIEFS. THEREFORE, MY LEGAL RIGHTS TO BE PROTECTED HAVE BEEN INFRINGED UPON BY POSTAL MANAGEMENT.
33. What are you seeking as a remedy to this complaint?

RESPONSE:

I WOULD LIKE TO BE REASONABLY ACCOMMODATED BY POSTAL MANAGEMENT AS I HAVE ASKEO FROM THE START IN MARCH 2017, BOTH VERBALLY AND BY LETTER THIS YEAR. I WOULD EITHER LIKE TO BE EXEMPTED FROM SUNDAY WORK AT ALL. BASED ON MY BELIEF TO KEEP THE LORD'S DAY IN ITS ENTIRETY; OR TO BE LATERALLY TRANSFERRED TO ANOTHER POSITION WITHIN THE POSTAL SERVICE THAT DOES NOT INCLUDE THE EXPECTATION OF SUNDAY WORK.

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


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UNITED STAYES POSTML SERVICE:
EEO Investigative Affidavit (Continuation Sheet)
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(CONTD FROM PAGE 4, QUESTION 12) . . WORKING ON SUNDAYS, BOTH AT THE LANCASTER HUB OFFICE ANDDURING CHRISTMAS AT OUR HOLTWOOD OFFICE WHEN THE TIME CAME. THAVE NOT WORKEDA SUNDAY SINCE THEY STARTED IN MARCH 2017 UNTIL PRESENT, SO MY POINT IS THAT IT WAS NOT QUT OF CHARACTER TOREFUSE TO WORK THOSE TWO SUNDAYS (DECEMBER 3 AND 17, 2017) FOR WHICH I WAS ISSUED THIS SUSPENSION SIMPLY BECAUSE THAT WAS THE STAND IWAS TAKING SINCE MARCH 2017 THAT I MUST KEEP THE LORD'S DAY BECAUSE OF MY CHRISTIAN FAITH. I NEVER INTENDED FOR JUSTIN TO BEAR THAT AMAZON SUNDAK DEUVERY BUIRDEN ALONE FOR-CHRISTMAS 2017 AT HOLTMOOD_BUT BECAUSE SHEILA WENT OUT INJURED (AND MY REQUEST FOR ACCOMMODATION IN PROGRESS) HE HAD TO WORK. IT IS GOMMON-KNOWEEDGE THAF BRHAN ANQ JUSFIN-ARE FRIENDS-OUFSHEE OF WORK GBRAN HHRED JUSFINH. I BELIEVE THAT JUSTIN COMPLAINED ABOUT WORKING THOSE SUNDAYS SO MUCH THAT BRIAN BECAME INEENSED ANOSUSPENOED ME OESPITE KNOWNSTWAS ONLY SEEKNG ACCOMAODATIONFOR WY FATH.
I SAY BRIAN BECAME "INCENSED" BECAUSE AT THAT SAME CHRISTMAS 2017 HE BEGAN TO OPENLY MOCK ME ON THE WORKROOM FLOOR ONMORE THAN ONE OCCASION. FOR EXAMPTE, INEEDED ANEWPHOTOTD, WHICH HE ISSUED AND THEN SAID TO EVERYONE THAT MY PICTURE REMINDED HIM OF THE PHOTOS OF SEXUAL DEVIANTS WHO HAPPENED TO BE ON THE FRONT PAGE OF THAT MORNING'S NEWSPAPER. HE SAIDITMORE THAN ONCE-LOUDER EACH TIME-AND THEN LAUGHED HYSTERICALLY NO ONE ELSE LAUGHED AT IT THAT I'M AWARE. I MADE NO RESPONSE. I WAS NOT OFFENDED IN THE SENSE OF SEXUAL HARASSMENT BY BRIAN'S COMMENT BUTRATHER BY THE ATIEMRT AT CHARACTERATTACKHE DEMONSTRATED AGAINST ME. HE MADE OTHER COMMENTS TOO, ALMOST ALWAYS ATTACKS AGAINST MY GHARAETEROR-QUESFIONHG MMY INFEGRTFY HN FRONF OF- FHE ENFIRE WORHROOM FLGOR +BELIEVEBRIAN DID ALL OF THIS BECAUSE HE WAS ANGRY THAT JUSTIN HAD TO WORK SUNDAYS, BUT I WOULD NOT BECAUSEOF MYRELTGTOUS BELIEFS. WOUTO SUGGEST THISWASRETALIATORY-BEHAVIORAND - WORK PLACE HARASSMENT.


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I have read the proceeding attached statement consisting of pages and it is true and complete to the best of my knowledge and belief In making this statement, I understand Section 1001. Title 18 of the U.S Code which states:

Whoever in any manner within the fundiction of any department or agency of the United States knowingly and wilfully falsifies, conceals or covers up by any trick, scheme. or device a material fact, or makes any false, fictitious or fraudulent statements or representation or makes or uses any false writing or document knowing the same to contain any false. fictitious of fraudulent statement or entry. shall be fined not more than \(\$ 10,000\) or imprisoned not more than 5 years, or both."

\section*{Privacy Act Notice}

Privacy Act Notice. The collection of this information is authorized by the Equal Employment Opportunity Act of 1972. 42 U.S.C. § 2000e-15, the Age Discrimination in Employment Act of 1967. as amended, 29 U. SC. §633a the Rehabilitation Act of 1973 , as amended 29 USS 0.9 794a, and Executive Order 11478. as amended. This information will be used to adjudicate complaints of alleged discrimination and to evaluate the effectiveness of the EEO program As a routine use, the information may be discoursed to an appropriate government agency, domestic or forego, for law enforcement purposes, where pertinent, it a legal proceeding to which the USPS is a party or has an interest to a government agency in order to obtain information relevant to a USPS decision concerning employment, security clearances, contracts licenses, grants, permits or other benefits to a government agency upon its request when relevant to its decision concerning employment security clearances, security or suitability mestigations, contracts licenses,
grants or other benefits, to a congressional dottie as your request, to an expert consultant or other person under contract with the usps so fulfil an agency function to the Federal Records Center for storage: to the Office of Management and Budget for review of private fief legrsation; to an independent certified public accountant during an official audit of USPS finances; to an investigator, administrative judge or complaints examiner appointed by the Equal Employment Opporumty Commission for investigator n of a formal EEO complaint under 29 CFR 16:4; to the vera Systems Protection Board or Office of Special Counsel tor proceedings or investigations involving personnel practices and other mattes with the f unstutron; and to a labor organization as required by the National Labor Relations Act Under the Privacy Act provisory. the information requested is voluntary for the complainant, and for Postal Service employees and other witnesses

\section*{USPS Standards of Conduct}

Postal Service regulations require all postal employees to cooperate in any postal investigation
Failure to supply the requested information could result in disciplinary action (FI.M 666).


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


\section*{UNTED STATES POSTAL SERVKCE:}

\section*{Amended EEO Investigative Affidavit (Complainant)}
\begin{tabular}{|c|c|c|c|}
\hline 1. Affiant's Name (Last, Groff, Gerald & & \multicolumn{2}{|l|}{2. Employing Postal Facility Holtwood Post Office} \\
\hline \begin{tabular}{l}
3. Position Title \\
Rural Carrier Associate
\end{tabular} & 4. Grade Level
\[
\mathrm{H}-05 \mathrm{H}
\] & 5. Pastal Address and Zip +4 55 Drytown Road Holtwood PA 17532-9998 & 6. Unit Assigned \\
\hline
\end{tabular}

\section*{Privacy Act Notice}

Privacy Act Notice. The coliection of this infommation is authorzed by the Equal Empkoyment Opportunity act of 1972.42 US.C. \(\S 2000\) e-16: the Age Discrimination in Employment Act of 1967, as amended, 29 U.SC. § 633a: the Rehabilitation Act of 1973, as amended. This information wial be used to adjudicate complaints of alleged discimsnation and to evaluate the effectiveness of the ELO program. As a routine use this information may be discloseo to an appropriate govemment agency, domestic or foreign, for law enforcement purposes; wherc pertinent, in a logal proceeding to which the USPS is a party or has an interest; to a government agency in order to oblan information relevant to a USPS decision concerning employment. security clearances. contracts. licenses, grants. permuts or other benefits: to a government agency upon its request when relevant to its decrsion concerning employment, security clearances, security or suitability investogations. contracts. Ficenses. grants or other benefts.

to a congressional office ot your fequest: to an expert Consultant, or other person under contract with the USPS to fuffil an agency function: to the Federal Reconds Center for stornge, to the Office of Management and Budget for teview of private relief fegistation; to an independent certified public accountant duntig an afficial audif of USPS finances, to an investigator, atminstrative judge or complaints examiner appointed by the Equal Employment Opportunty Commission for Investigation of a fomal EEO complaint under 29 CFR 1614 ; to the Meri Systems Protection Bcard or Office of Sperial Counsel for proceedings or itvestigations nuolving persomel practices and other matters within their jurisiciction and to a labor orgamization as required by the Nationai Labor Relations Act. Under the Privacy Act provision the information nequested is voluntary for the complainant, and for Postal Service employees and other witnesses

Important Information Regarding Your Complaint

This PS Fom 2568-A. EEO Investigative Affidevit (Complainantl, and the other form mentioned below, are being provided for you to use to fully respond to the accompanying questrons. Mait or deliver your completed statement to the EEO complaints investigator within 15 calendar days of the date you received the forms Use PS Form(s) 2569. FEO Investigative Affidavit (Continuation Sheet). as needed. to complete your written statement Remember to number the top of each page and sugn and date the botlom of each page of your statement If you return your statement by mail the retum enveliope must be postmarked on or before the \(15^{7}\) calendar day ahter the date that you received the affidavil forms

Fallure to complete your stalement and return the forms withun the alkotted time period could result in your complaint beng dismissed basad upon your falure so procesd EEOC complaints processing regulation. 29 C.F.R. 1614.107 (a)(7). states, in part, [A complaint may be dismissed] Where the agency has provided the complainant with the witten request to prowide relevant infomation or otherwise proceed with the complaint, and the complainant has failed to respond to the request within 15 days of is receipt. or the complainant's resporse does not address the agency's request. provided that the request included a notice of the proposed dismissal."

Stalement (Continue on Farm 2569 f additional spice is requined. Form will auto-create if usirg Microsoft Werd)

\section*{CLAIM 1: YOU WERE ISSUED A 14 DAY SUSPENSION}
1. You allege that you received a Notice of 14 Day Paper Suspension. On what date did you receive the suspension.
RESPONSE:

THE SUSPENSION PAPERWORK IS DATED OCTOBER 5. 2018. I SIGNED IT AS RECEIVED ON OCTOBER 12, 2018 AT 8:37 AM

I dectare under penalify of perjury that the foregoing is true and correct.

\begin{tabular}{|c|c|c|}
\hline Page No. & No. Pages & Case No. \\
2 & 7 & 4C-170-0030-18
\end{tabular}
a. What offense were you charged with? RESPONSE:

UNSATISFACTORY ATTENDANCE
2. Please identify the management official(s) by full name, position title, work location, telephone number and e-mail address that you allege is responsible for issuing you the you the 14 Day Paper Suspension. RESPONSE:

BRIAN M HESS, POSTMASTER; HOLTWOOD POST OFFICE, HOLTWOOD, PA 17532; 717-284-2450; brian.m.hess@usps.gov
3. Do you feel that any other management official(s) was involved in the decision? If so, identify each by full name, position title, telephone number and work location and explain how he/she was involved. RESPONSE:

YES. CHRIS KRUPPO, ACTING-MANAGER, POST OFFICE OPERATIONS. IDO NOT HAVE HIS/HER CONTACT INFORMATION OR WORK LOCATION. HE/SHE SIGNED THE SUSPENSION IETTER THAT I WAS GIVEN AS "HIGHFR LEVEL CONCURRENCE" ON OCTOBER 5, 2018
4. Were you given an Investigative Interview? If so please state the date it was given and who conducted the interview RESPONSE:

YES. THE INVESTIGATIVE INTERVIEW WAS CONDUCTED BY BRIAN HESS ON SEPTEMBER 6. 2018.

Ideclare under penalty of perjury that the foregoing is true and correct.
Athant's Signature

PS Form 2569. March 2001
\begin{tabular}{|c|c|c|}
\hline Page No. & No. Pages & Case No. \\
3 & 7 & \(4 \mathrm{C}-170-0030-18\)
\end{tabular}
5. Were you informed of the reason that an investigative interview was being conducted? If so. what reason were you given and by whom?
RESPONSE:

YES, I UNDERSTOOD THE PRE-DISCIPLINARY INTERVIEW WAS BEING CONDUCTED IN REGARDS TO THREE UNSCHEDULED ABSENCES ON SUNDAYS (JUNE 17, 2018, AUGUST 12. 2018. AND AUGUST 26, 2018). BRIAN HESS EXPLAINED THIS IN A LETTER BEFORE THE meEting and verbally during the meeting itself.
6. What led to you being issued the 14 Day paper suspension?

RESPONSE:
AS I HAVE STATED PREVIOUSLY, I AM A CHRISTIAN AND BELIEVE THAT TO WORK ON THE LORD'S DAY FOR AMAZON DELIVERY WOULD BE A BREACH OF MY CONSCIENCE BECAUSE GOD WANTS US TO HONOR THE LORD'S DAY AS UNIQUE AND HOLY-A DAY TO BE DEDICATED TO REST AND WORSHIP OF GOD. AS SUCH, I HAVE ALWAYS DECLINED TO WORK ANY SCHEDULED SUNDAY FOR THE USPS SINCE THEY BEGAN IN OUR AREA IN MARCH 2017. THEREFORE, OVER THE PAST NINETEEN MONTHS OR SO, I HAVE ACCRUED QUITE A FEW UNEXCUSED ABSENCE FORMS THAT BRIAN HESS HAS ASKED ME TO SIGN THAT STATE CLEARLY THAT I DID NOT REPORT FOR DUTY BECAUSE OF MY RELIGIOUS BELIEFS. IN REGARDS TO WHAT LED TO THIS PARTICULAR 14 DAY PAPER SUSPENSION, I MUST SUGGEST THAT I CANNOT EXPLAIN IT ENTIRELY. AT WORK, I GO FOR MONTHS WITHOUT ANY MENTION OF DISCIPLINE (ALL THE WHILE I AM MISSING SUNDAYS AND ACCUMULATING UNEXCUSED ABSENCES) AND THEN SUDDENLY ON SEPTEMBER 4, 2018 BRIAN HANDED ME A LETTER THAT I AM SCHEDULED FOR A PRE-DISCIPLINARY INTERVIEW ON SEPTEMBER 6, 2018 AND THEN ON OCTOBER 12. 2018 HE HAD ME SIGN FOR RECEIPT OF THE SUBSEQUENT 14 DAY PAPER SUSPENSION HE ISSUED. IASKED HIM ABOUT THE SEEMING RANDOMNESS OF ALL OF THIS, AND HE STATED VERBALLY THAT OVER THE SUMMER THERE WAS AN EEO INVESTIGATION IN REGARDS TO THE 7 DAY PAPER SUSPENSION HE HAD ISSUED ME PREVIOUSL. Y (JANUARY 2, 2018) BUT NOW APPARENTLY POSTAL MANAGEMENT HAS DECIDED TO RESUME THE DISCIPLINARY PROCESS.

I dectare under penally of perjury that the foregoing is true and correct.


Case 5:19-cv-01879-JLS Document 36-2 Filed 02/14/20 Page 78 of 356
7. Were you informed of the reason that you were issued a 14 day paper suspension? If so, what reason were you given and by whom?
RESPONSE:
YES THE SUSPENSION PAPERWORK (COMPLETED BY BRIAN HESS) STATES THAT THE DISCIPLINE WAS ISSUED FOR UNSATISFACTORY ATTENDANCE IT GOES ON TO STATE THAT I AM CHARGED WITH VIOLATION OF THE USPS STANDARDS OF CONDUCT FOR FAILURE TO BE REGULAR IN ATTENDANCE. I AM ALSO CHARGED WITH VIOLATION OF MAINTAINING A REGULAR SCHEDULE ANDIOR PROVIDING EVIDENCE FOR ABSENCES WHEN REQUIRED. THE PAPERWORK ALSO STATES THIS DISCIPLINE WAS ISSUED AFTER CONSIDERATION OF PREVIOUS DISCIPLINE OF A LETTER OF WARNING (ISSUED JUNE 9, 2017) AND A 7 DAY SUSPENSION (ISSUED JANUARY 2, 2018).
8. Did you agree with the reason provided? If not, why not? RESPONSE:

NO. I CANNOT AGREE WITH THE REASON PROVIDED AS IT COMPLETELY IGNORES THE ISSUE OF MY REQUEST FOR REASONABLE ACCOMMODATION FROM THE USPS TO BE EXEMPTED FROM SUNDAY WORK IN THE FIRST PLACE BECAUSE OF MY RELIGIOUS BELIEFS. IN OTHER WORDS, I HAVE ASKED TO NOT BE SCHEDULED ON SUNDAYS AT ALL BECAUSE I AM A CHRISTIAN. TO THEN CHARGE ME WITH UNSATISFACTORY ATTENDANCE BECAUSE I WILL NOT VIOLATE MY CONSCIENCE TO WORK ON SUNDAYS AS SCHEDULED IS A COMPLETE VIOLATION OF MY CIVIL RIGHTS AND RELIGIOUS PROTECTIONS PROVIDED FOR UNDER FEDERAL LAW AND USPS EEO POLICY. I AM REGULAR IN ATTENDANCE ON ALL OTHER SCHEDULED WORK DAYS. I WORK THE AMAZON DELIVERY SCHEDULE ON HOLIDAYS EVERY TIME I AM SCHEDULED. I SIMPLY MUST DECLINE TO WORK ON SUNDAYS. IT IS WRONG TO SUGGEST THAT THE EXPRESSION OF MY PROTECTED RELIGIOUS BELIEFS SOMEHOW MAKES ME A POOR EMPLOYEE IN VIOLATION OF USPS POLICY THAT NECESSITATES DISCIPLINE.
9. Why do you believe that your religion was a factor when you were given a 14 Day paper suspension? RESPONSE:

THE SUSPENSION WAS ISSUED BECAUSE I FAILED TO REPORT FOR DUTY ON THREE SUNDAYS (JUNE 17, 2018; AUGUST 12, 2018; AUGUST 26, 2018) AS BRIAN STATED IN THE PAPERWORK HE ISSUED ON OCTOBER 5, 2018. I DID NOT REPORT ON THOSE SUNDAYS AS A DIRECT RESULT OF MY RELIGIOUS CONSCIENCE TO KEEP THE LORD'S DAY WHERE I BELIEVE IT IS WRONG TO WORK INSTEAD OF WORSHIPING GOD AND RESTING ON THAT DAY. SINCE I CHOSE TO HONOR MY FAITH INSTEAD OF REPORTING AS ORDERED ON THOSE SUNDAYS, AND WAS THEREFORE PUNISHED WITH A SUSPENSION, I BELIEVE MY RELIGION WAS A DIRECT FACTOR IN THE ISSUANCE OF THIS 14 DAY PAPER SUSPENSION.

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


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UNITED STATES
POSTAL SERVICE:
EEO Investigative Affidavit (Continuation Sheet)

10. Are you aware of any other employee with the same position title and grade as you that were treated the same as you (i.e. also was also requested a religious accommodation, but was also instructed to work a full tour of duty on Sundays)? If so: please provide the following
a. Their full name, position title, grade level and work location RESPONSE:

LISA NEWSWANGER; RURAL CARRIER ASSOCIATE; GRADE LEVEL UNKNOWN: SHE WORKED OUT OF THE CHRISTIANA, PA POST OFFICE. SHE RESIGNED AND I DO NOT KNOW IF SHE SOUGHT FORMAL RELIGIOUS ACCOMMODATION FOR HER FAITH, BUT 100 KNOW SHE STATED THAT HER RESIGNATION WAS DUE TO THE MANDATORY SUNDAY AMAZON DELIVERY AND THE RESPECT OF HER FAITH.
b. Their Supervisor/Manager's name RESPONSE:

UNKNOWN
c Their religion RESPONSE:

I BELIEVE SHE IS A CHRISTIAN, BUT I DO NOT KNOW HER PERSONALLY TO BE SURE.
11. Are you aware of any other employee with the same posituon titie and grade as you that were freated more favorably than you who also requested a religious accommodation (i.e. who were not instructed/required to work a full tour of duty on Sundays)? If so, please provide the following:
a. Their full name, position title, grade level and work location RESPONSE.

N/A

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


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\section*{UNITED STATES}

POSTAL SERVICE**
EEO Investigative Affidavit (Continuation Sheet)

b. Their Supervisor/Manager's name RESPONSE:

N/A
C. Their religion RESPONSE:

N/A
d. Please explain the reason that you believe they were not required to work on Sundays RESPONSE:

N/A
12. Did you file a grievance on this issue? If so, what is the status? Please provide a copy of the grievance documentation.
RESPONSE:
NO GRIEVANCE WAS FILED.
13. What Postal Service poincies, rules, or regulation are relevant to this claim? Was the policy you identified in this response violated? If so. please explain how. Please provide a copy of the policy.

IN THE USPS' EQUAL EMPLOYMENT OPPORTUNITY POLICY STATEMENT (SEE ATTACHED). PARAGRAPH TWO STATES THAT IT IS THE POLICY OF THE POSTAL SERVICE THAT ALL EMPLOYEES BE AFFORDED EQUAL OPPORTUNITIES IN EMPLOYMENT WITHOUT REGARD TO RELIGION, AMONG

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


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\section*{UNITEDSTATES \\ POSTAL SERVKE:}

\section*{EEO Investigative Affidavit (Continuation Sheet)}
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OTHER THINGS, AND, AS SUCH, THE POSTAL SERVICE PROHIBITS DISCRIMINATION BASED ON ANY OF THESE CATEGORIES. IT GOES ON TO SAY (PARAGRAPHZ THAT, AS AN EMPLOYEE, I MUST NOT TOLERATE DISCRIMINATION OR HARASSMENT. I BELIEVE THIS 14 DAY PAPER SUSPENSION (AND ALL RELATED PREVIOUS DISCIPLINE) IS A DIRECT VIOLATION OF THIS POSTAL POLICY AGAINST RELIGIOUS DISCRIMINATION FOR THE SIMPLE FACT THAT I AM BEING PUNISHED BECAUSE I WANT TO HONOR MY CONSCIENCE AND LAWFULLY-PROTECTED RIGHT TO KEEP THE LORD'S OAY ON SUNDAYS INSTEAD OF REPORTING TO WORK. IN FACT, IT CAN BE ARGUED THAT FOR THE PAST NINETEEN MONTHS OR SO, I HAVE BEEN SUBJECTED TO CONTINUOUS HARASSMENT AND DISCRIMINATION FROM POSTAL MANAGEMENT FROM THEIR THREATS. BOTH REAL AND IMPLIED. OF DISCIPLINE AND JOB TERMINATION, NOT TO MENTION THE VERBAL ABUSE FROM MY SUPERVISOR (BRIAN HESS) DESCRIBED IN MY PREVIOUS STATEMENT REGARDING MY 7-DAY EDIT SUSPENSION. AS I STATED ABOVE, PARAGRAPH 2 OF THIS POLICY ACTUALLY ENCOUBAGES ME E E \(\in \in\) (AS AN EMPLOYEE) NOT TO TOLERATE THIS DISCRIMINATORY AND HARASSING BEHAVIOR IN THE WORKPLACE. IT SEEMS WRONG FOR THE POSTAL SERVICE TO CLAIM PROTECTIONS FROM RELIGIOUS DISCRIMINATION UNDER ITS POLICY, BUT AT THE SAME TIME TO ISSUE DISCIPLINE THAT EVENTUALLY LEADS TO JOB TERMINATION AS A DIRECT RESULT OF THE PRACTICE OF MY RELIGIOUS BELIEFS TO KEEP SUNDAYS AS THE LORD'S DAY. I AM SIMPLY DOING WHAT THE POLICY CALLS ME TO AS A PROACTIVE EMPLOYEE TO RESIST DISCRIMINATION IN THE WORKPLACE IN AN EFFORT TO CALL OUR ORGANIZATION TO A BETTER PLACE.
14. What are you seeking as a remedy to this complant?

RESPONSE:
I REQUEST A REASONABLE ACCOMMODATION BY POSTAL MANAGEMENT TO BE EITHER EXEMPTED FROM SUNDAY WORK AT ALL, BASED ON MY BELIEF TO KEEP THE LORD'S DAY IN ITS ENTIRETY; OR TO BE LATERALLY TRANSFERRED TO ANOTHER POSITION WITHIN THE POSTAL SERVICE THAT DOES NOT INCLUDE THE EXPECYATION OF SUNDAY WORK.


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


Case 5:19-cv-01879-JLS Document 36-2 Filed 02/14/20 Page 82 of 356
U.S. Postal Service

Certification


I have read the proceeding attached statement, consisting of
 of my knowledge and belief in making this statement I understand Ser, and it is and complete to the best states:

Whoever. in any manner within the junsdiction of any department or agency of the United States knowngly and wiffully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any talse. fictitious or fraudulent statements or representation. or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \(\$ 10.000\) or imprisoned not more than 5 years, or both."

\section*{Privacy Act Notice}

Privacy Act Notice. The collection of this information is authonzed by the Equal Emphyment Opportunty Act of 1972.42 US.C. \(\$ 2000 \mathrm{e}-16\). the Age Duscrimination in Employment Act of 1967. as amended. 29 US.C. \(\$ 633 \mathrm{a}\). The Rehabiblation Act of 1973, as amendeo, 29 U.S.C. \(\$\) 194a: and Executive Order 11478, as amended. This information will be used to adjudicate complaints of alleged discrimination and to evaluate the effectiveness of the FFO program As a routine use thus infomation may be disclosed to an appropriate government agency, domestic or foreign. for law enforcement purposes. where pertinent, in a legal proceeding to which the USPS is a party or has an interest; to 2 government agency in order to obtain information relevant to a USPS decision conceming empioyment, security dearances. contracts. ifcenses. grants, permits or other benefits: to a government agency upor its request when relevant to is decision conceming employment, secumty clearances. security or sutabitity investigations. contracts. licenses.
grants or other benefis: to a congressional office at your requeast to an expert, consultant or other person under contract wath the USP\$ to fubill an agency function. to the Federal Records Center for storage; to the Office of Management and Budge: for review of private relief legislation: to an independent certified public accountant during an official audt of USPS finances; to an investigator, administrative judge or complaints examiner appointed by the Equal Employment Opportunity Commission for investigation of a formal EFO complaint under 29 CFR 1614; to the Merit Systems Protection Board or Office of Special Counsel tor proceedings or investigations invoiving personnel practicos and other matters within their junisdictron; and to a iabor organization as required by the National Labor Relations Act Under the Privacy Act provision the information requested is woluntary for the complainant, and for Postas Service employees and other withesses

Postal Service regulations require all postal employees to cooperate in any postal investigation Failure to supply the requested information could result in disciplinary action (ELM 666).


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


Affidavit A

\section*{EEO Investigative Affidavit for Compensatory Damages \\ Note: Not applicable to Age Discrimination in Employment Act (ADEA) Claims}


\section*{Instructions for the Complainant:}

During an investigation into alleged discrimination, The Postal Service is required to gather evidence regarding appropriate remedies, which may include compensatory damages. The remedy that you are seeking to resolve this complaint includes your claim that you are entited to receive a monetary award. Therefore, you must provide testimony and evidence concerning the nature, extent and severity of the ham you suffered due to the alleged discriminatory conduct. PS Form 2569-C contains a number of questions and/or statements regarding your claim for damages. Please read the questions or statements carefully before responding. If you need addifional space, please use an additional sheet(s). Any additional sheet(s) must show the number of this form (Form 2569-C). the item number(s) to which it pertains, a page number and the total number of pages submitted for this form. You must dectare unoler penatty of periury that the information you provide on this form inctuding any attached shoets is true and correct.
1. I experienced financial difficulties because of the discriminatory act(s) alleged in my complaint.No
If yes, provide full explanation. Please include description and cause of difficully(ies), when occurred, duration of occurrence, and severity.
THE POSTAL SERVICE'S LACK OF ACCOMMODATION FOR MY BELIEFS AND THREAT OF IMMINENT JOB TERMINATION SINCE MARCH 2017 HAS CAUSED ME TO MISS OPPORTUNITIES FOR WORK. FOR EXAMPLE, THE CARRIERS IN MY OFFICE SPENT ALL THEIR ANNUAL LEAVE QUICKLY BECAUSE THEY FEARED LOSING ME ANYTIME AS THEIR SUB CARRIER. AT THE END OF THE YEAR, THERE WAS LESS WORK FOR ME SINCE THEY HAD NO LEAVE LEFT. SECONDLY, POSTMASTERS SAID THEY DID NOT CALL ME AT TIMES BECAUSE THEY DID NOT KNOW IF I WAS STILL WITH THE POSTAL SERVICE ANYMORE OR NOT. I CANNOT QUANTIFY THIS LOSS
2. I experienced medical problems because of the discriminatory act(s) alleged in my complaint.
[x] Yes
\(\square\) No
If yes, provide full explanation. Please include description and cause of problems, when occurred, duration of occurfence, and severity
THE OBVIOUS STRESS/ANXIETY FROM LIVING FOR A YEAR UNDER IMMINENT JOB LOSS, HARASSMENT, AND DISCIPLINARY THREATS HAS CAUSED OR AGGRAVATED INSOMNIA, HEART BURN, SLEEP APNEA, HAIR LOSS, WEIGHT GAIN, DEPRESSION/SUICIDAL THOUGHTS, AND EMOTIONAL DISTRESS. ALL OF THESE SYMPTOMS HAVE BEEN PRESENT SINCE MARCH 2017 UNTIL PRESENT SINCE NOTHING HAS BEEN RESOLVED WITH POSTAL MANAGEMENT AND MY REQUEST FOR ACCOMMODATION. THIS HAS BEEN THE MOST SEVERE PAIN AND STRESS OF MY LIFE AS I FACED POTENTIAL FINANCIAL DISASTER AND LOSS OF MY CAREER.
3. I obtained psychological or psychiatric counseling and/or treatment because of the discriminatory act(s) alleged in my complaint.

\section*{\(\square\) Yes}

囚 No
If yes, provide full explanation. Please include description and cause of problems, when occurred, duration of occurrence, and severity.
WHILE COUNSELING WOULDVE LIKELY PROVEN HELPFUL IN MY SITUATION, MY NON-CAREER LEVEL POSTAL INSURANCE DOES NOT PROVIDE COVERAGE FOR THIS CARE, AND I DID NOT FEEL I COULD RISK THE EXPENSE OF PAYING FOR IT MYSELF SINCE I EXPECTED TO LOSE MY JOB AT ANY TIME SINCE MARCH 2017. I ALSO COULD NOT AFFORD PROPER MEDICATIONS, SO I SOUGHT THE USE OF HERBALINATURAL THERAPIES INSTEAD.
4. I have had to take medication because of the discriminatory act(s) alleged in my complaint.

Q Yes
If yes. list type of medication, reason for the medication, and the cost of the medication 5-HTP (STRESS RELIEF/SLEEP AID) (\$40.27); MAGNESIUM (SLEEP AID) (\$17.15); ADRENAL OPTIMIZER (STRESS RELIEF) ( \(\$ 35.24\) ); ASHWAGANDHA (STRESS RELIEFISLEEP AID) (\$19.35): VALERIAN ROOT (SLEEP AID) (\$10.18)

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\hline Gerald Groff & 4C-170-0030-18 & \[
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5. Did any of the difficulties for which you checked "Yes" in items 1-4 exist prior to the act(s) of discrimination alleged in your complaint?
[ X Yes
\(\square\) No

If yes, please complete question 6 below
6. Describe for each pre-existing condition how that condition was made worse by the act(s) of discrimination alleged in your complaint. Begin each description with the item number on page 1 (items 1 through 4) to which it pertains.

ITEM \#1: I AM A PART-TIME CARRIER, SO MY FINANCES ARE LIMITED BY THE WORK I GET EACH WEEK. THE LOSS OF WORK FROM CARRIERS SPENDING THEIR LEAVE PREMATURELY OR POSTMASTERS FEELING THEY COULD NOT CALL ME ONLY AGGRAVATED MY FINANCIAL SITUATION.
ITEMS \#2/4: STRESSIANXIETY IS HOW MY PERSONALITY DEALS WTH DIFFICULT SITUATIONS IN LIFE, BUT THE INTENSITY AND LONGEVITY OF THIS DISCRIMINATION SINCE MARCH 2017 REALLY MAGNIFIED MORE THAN EVER IN MY LIFE THE EMOTIONAL DISTRESS AND NEED FOR RELEVANT MEDICATIONS I HAVE MENTIONED.
7. Is there any other information or evidence regarding your claim for entitement to compensatory damages that you want to include with your affidavit?
X Yes
1 No

If yes, please provide a full explanation of the information you wish to include. Altach additional pages if necessary I WOULD LIKE TO REITERATE THAT AS A MATTER OF RESOLUTION OF MY CLAIM. I HAVE ALSO REQUESTED THE REMOVAL OF ALL DISCIPLINE FROM MY WORK RECORD, COMPENSATION FOR ATTORNEY COSTS AND FEES RELATED TO MY CASE, AND DAMAGES FOR ANY LOST INCOME AND EMOTIONAL DISTRESS. THESE ITEMS HAVE YET TO BE QUANTIFIED AS THIS MATTER REMAINS UNRESOLVED.

\begin{abstract}
IMPORTANT:
You must attach or provide the investigator with copies of documentation, such as bills, doctor's statements, pharmacy bills, statements from other persons, or other paperwork relevant to the difficulty that you claim is related to the discriminatory act(s) alleged in your complaint. If you do not have coples of your documentation, you may provide the original to the investigator who will copy relevant records and retum the original documents to you. Alternatively. for medical information and records, you may provide a signed authorization from your health care provider to the investigator permitting himher to obtain information directly from your health care provider or pharmacy. Or, you may sign a medical information release provided by the investigator if you prefer
\end{abstract}

\section*{Privacy Act Notice}

 aftormation wall be used to zdudicate compazints of alleged discrimination and to evaluate the effectiveness of the c[O program As a routine use. this information may De
 has an wenest: to a government agency in onder to cotain miomaton relcvant to a USPS decision comerning employment secunty clearances, contrakts. icenses. prants permits of other sencrits, to a government agency tapon its request when relewant to its decision concbinng emptoyment, security chearancea, specurity of suitability




 Ant Under the Pruvacy Act provitom, the information requested is woluntary for the compitanamt and for Postal Service empioyees and oither witnesses

I declare under penalty of perjury that the foregoing, including any attached sheets, is true and correct.


PS FORM 2569-C (Page 2 of 2) February 2004

Case 5:19-cv-01879-JLS Document 36-2 Filed 02/14/20 Page 85 of 356
Holtwood Post Office
\(\frac{\text { UNTIEOSTMIES }}{\text { POSTII SERVICE }}\)
DATE: January 2, 2018
SUBJECT: Notice of 7-Day Paper Suspension
TO: Gerald Groff
RIN: Rural Carrier Associate
Holtwood Post Office
You are being issued this seven (7) calendar day paper suspension (no-time-off) for the following reason(s):

\section*{CHARGE: IMPROPER CONDUCT}

On December 3, 2017 and December 17, 2017 you were instructed that you were to work for Sunday Amazon. You repeatediy refuse to work any of the Sundays that you are instructed to work. You have stated that you are aware of the requirement to work Sundays and you refuse because you are a Christian and it should be respected that no work should be done on a Sunday. Altempts have been made to accommodate your religious beliefs and allow you to come to work later than other employees so that you may attend church services on Sunday. You still refuse to comply with the requirement for you to work Sundays stating that an actual reasonable accommodation would be to not have to work at all.

During your pre-disciplinen intonticn December 20, 2017 you acinitted that ;ou are aware that you required to be regular in attendance. You also admitted that you are aware that the United States Postal Service is a \(24 / 7\) operations and that working Sundays and holidays is a requirement. You also admitted that the Postal Service has attempted to make an accommodation for you to report later than scheduled so that you can attend church services, however, you stated that is not reasonable and that you need the entire day off.

Your actions are in violation of, but not limited to the following:

\section*{Employee and Labor Relations Manual}

Section 665.13 Discharge of Duties
Employees are expected to discharge their assigned duties conscientiously and effectively.

Section 665.15 Obedience to Orders
Employees must obey the instructions of their supervisors. If an employee has reason to question the propriety of a supervisor's order, the individual must nevertheless carry out the order and may immediately file a protest in writing to the official in charge of the installation or may appeal through official channels.

\section*{Section 665.16 Behavior and Personal Habits}

Employees are expected to conduct themselves during and outside of working hours in a manner that reflects favorably upon the Postal Service. Although it is not the policy of the Postal Service to interfere with the private lives of employees, it


Affidavit A

Case 5:19-cv-01879-JLS Document 36-2 Filed 02/14/20 Page 86 of 356 does require postal employees be honest, reliable, tr worthy, courteous, and of good character and reputation. The Federal Standards of Ethical Conduct referenced in 662.1 also contain regulations governing the off-duty behavior of postal employees. Employees must not engage in criminal, dishonest, notoriously disgraceful, immoral, or other conduct prejudicial to the Postal Service. Conviction for a violation of any criminal statute may be grounds for disciplinary action against an employee, including removal of the employee, in addition to any other penalty imposed pursuant to statute. Employees are expected to maintain harmonious working relationships and not to do anything that would contribute to an unpleasant working environment.

Your failure to comply with these regulations warrants this action.
In addition, the following elements of your past record have been considered in arriving at this decision:

You were issued a Letter of Warning dated June 9, 2017 for Failure to be Regular in Attendance

This action is taken to impress on you that you must correct your work deficiencies and demonstrate adherence to postal regulations. Failure to meet the above stated or other legitimate work expectations may result in further discipline, up to and including removal from the Postal Service. While you will not serve time off with this seven-day paper suspension, it has the equivalent degree of seriousness as if you had served time off without pay.

You have the right to appeal this action under the grievance/arbitration procedure set forth in Article 15, Section 2 of the National Agreement within 14 calendar days of your receipt of this notice.


Date: \(-1 / 11 / 2018\)


Date:


8 \(\qquad\)
Keith Krempa (higher level concurrence) Manager, Post Office Operations


\section*{cc: Labor Relations}

\section*{File}

Barbara Callahan, NRLCA, District Representative, PO Box 392, Lititz, PA 17543


Affidavit A Page 28 of 53

Case 5:19-cv-01879-JLS Document 36-2 Filed 02/14/20 Page 87 of 356

Holtwood Port Office
UAPTED Smite

DATE: October 5. 2018
SUBJECT: Notice of 14-Day Paper Suspension \({ }^{(1)}\)

TO: Gerald Groff
EIN:


Rural Carrier Associate, Holtwood Post Office

You are being issued this seven (14) calendar day paper suspension (no-time-of) for the following reason (s):

Unsatisfactory Attondance
You have had the following unscheduled absences:
\begin{tabular}{lll}
\(06 / 17 / 2018\) & 8.00 & Leave Without Pay \\
\(08 / 12 / 2018\) & 8.00 & Leave Without Pay \\
\(08 / 26 / 2018\) & 8.00 & Leave Without Pay
\end{tabular}

During your pre-disciplinary interview (PDI) on September 6. 2018, when asked if you are aware that it is your responsibility to report to work promptly as scheduled, you answered yes. You also stated you were aware that it is a requirement for Rural Carrier Associates to work on Sunday per the National Agreement. You stated that accommodations have been offered to adjust your schedule to allow you to attend your church services, but this actommodation was not reasonable.

Your failure to maintain regular attendance constitutes a viotation of USPS Standards of Conduct as expressed in the Employee and Labor Relations Manual (ELM), 665.41 Requirement of Regular Altendance, "Employees are required to be regular in attendance. Failure to be regular in attendance may result in disciplinary action, including removal from the Postal Service."

In addition, you are in violation of the ELM, Section 511.43, "Employees are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences. In addition, employees must provide acceptable evidence for absences when required "

The following elements of your past record have been considered in arriving at this decision:

Letter of Warning dated June 9, 2017 for Unsaüisfactory Attendance
7-Day Suspension dated January 2, 2018 for Improper Conduci
This action is taken to impress on you that you must correct your work deficiencies and demonstrate adherence to postal regulations. While you will not serve time off with this fourteen-day paper suspension, it has the equivalent degree of seniousness as if you had served time off without pay. This action is intended to correct the deficiencies above and should be taken seriously. Future deficiencies will result in more severe disciplinary action being taken against you, up to and including, removal from the Postal Service.

\footnotetext{
\({ }^{(1)}\) An employee, who has reseived a fourteen (14) day suspension will be given a day of reflection, provided it is agreeable to the union. (see Article 16.3 of the Rural Carrier Agreement for instructions)
}

\section*{Grofl, Gerald}

EIN:

You have the right to appeal this action under the grtevancelarbitration procedure set forth in Article 15. Section 3 of the National Agreement within 14 cays of your receipt of this notice.

\[
\text { Date: } \frac{10-9-2018}{11: 43 \mathrm{Am}}
\]

\title{
Geraid Groff \\ Rural Carrier Associate Holtwood Post Office
}

Re: Request for Reasonable Accommodation for Amazon Sunday Delivery

To Whom it May Concern,

I am writing to explain the reasonable accommodation that I am requesting for Amazon Sunday delivery.

It is my belief as a Christian that the Lord's Day (Sunday) is a day that is special and unique---a day that is to be kept in its entirety as a day of worship and rest to honor God. Specifically. since Sunday is the day that Christians keep as the Lord's Day, we are not to report to our job or workplace for something like Amazon deliveries. The Lord's Day is meant to be a complete day of rest and worship to God, and it is more inan just church attendance.

During the course of the past year (2017) I have explained my personal beliefs to members of management at the Lancaster Post Office (those in charge of Amazon Sunday deliveries). These managers offered me the opportunity to come in after church as their idea of a reasonable accommodation for me to attend church and then report to work afterwards However, I do not consider this a reasonable accommodation of my faith because I musi keep the entire day to honor God, rather than just part of it.

As I stated earlier, a reasonable accommodation would be to allow me to keep the Lord's Day (Sunday) in its entirety without being scheduled for Sunday work or expected to report for duty at all that day. Again, the Lord's Day is meant to be an entire day without reporting to work in order to worship God and keep a day that is special and uniquely intended by God as a day of rest apart from our work schedule. To be clear, to work on Sundays as a part of the Amazon delivery would be a violation of my religious conscience, and this is why 1
am asking for a reasonable accommodation to be exempted from being scheduled on Sundays for Amazon delivery.

\section*{Respectfully,}

Gerald Groff


Gerald Groff
Rural Carricr Associate
Hollwood. PA Post Office

Re: Request for Reasonable Accommodation for Amazon Sunday Delivery

To Whom it May Concern.

1 am writing to request a reasonable accommodation in reyards to Amazon Sunday delivery, in order that I nay be able to keep the Lord's Day on Sundays in its entirety without being scheduled for parcel delivery work.

My request is that I be granted a lateral transler from my position as a Rural Carrier Associatc (RCA) to a position within the United States Postal Service that docs not require work on Sundays.

As I stated above, I would ask that any transfer position would reasonably accommodate my religious belief that I must keep the I ord's Day (Sunday) in its entirety whout being scheduled to work that day at all. In this way, I can protect my religious conviction that Sunday is to be observed as a unique and special day as unto the lord for worship and rest.

Respectiully,


\section*{amazoncom}

Final Details for Order \# 102-0248398-4344251
Print this page for your records.
Subscribe and Save Order Placed: January 22, 2017
Amazon.com order number: 102-0248398-4344251
Order Total: \(\$ 9.59\)
This order contains Subscribe 8 Save items.

Shipped on January 23, 2017


\section*{Payment information}


To view the status of your order, return to Order Summary

Contains of Use ; Privacy Notice 1996-2018, Amazon com, bic. or its affinities

\section*{amazoncom:}

Final Details for Order \#102-3034104-7433011
Print this page for your records.

\section*{Subscribe and Save Order Placed: January 22, 2017}

Amazon.com order number: 102-3034104-7433011

\section*{Order Total; \(\$ 3.23\)}

This order contains Subscribe 8 Save items.

Shipped on January 25, 2017


\section*{Payment information}

\section*{Payment Method:}

Gift Card
Billing address
Gerald E. Graf
NEW PROVIDENCE, PA 17560-9680 United States

Credit Card transactions
To view the status of your order, return to Order Summary.

Conditions of Use I Privacy Notice of 1996-2018, Amaton.com, bic, or ts affiliates

Item(s) Subtotal: \$4.98 Shipping \& Handling: \(\$ 0.00\) Subscribe R Save: \(-\$ 0.75\) Your Coupon Savings: \(-\$ 1.00\)

Total before tax: \(\$ 3.23\) Estimated tax to be collected: \(\$ 0.00\)



\section*{amazoncom}

Final Details for Order \#106-6405438-2959461
Print this page for your records.
Subscribe and Save Order Placed: March 25, 2017
Amazon.com order number: 106-6405438 2959461
Order Total: \(\$ 9.76\)
This order contains Subscribe \& Save items.

Shipped on March 28, 2017
\begin{tabular}{|c|}
\hline Items Ordered \\
\hline \multirow[t]{2}{*}{} \\
\hline \\
\hline Condzion: Mew \\
\hline \multirow[b]{3}{*}{Shipping Address: Gerald E. Groff} \\
\hline \\
\hline \\
\hline NEW PROVIDENCE, PA 17560.9680 \\
\hline United States \\
\hline Shipping Speed: \\
\hline Standard Shipping \\
\hline
\end{tabular}

\section*{Payment information}
\begin{tabular}{|c|c|}
\hline Payment Method: & Item(s) Subrotal:\$11.48 \\
\hline \multirow[t]{2}{*}{Gift Card Last digits:} & Shipping \& Handlıng: \$0.00 \\
\hline & Subscribe \& Save: -\$1.72 \\
\hline Billing address Gerald E. Groff & Total before lax: \(\$ 9.76\)
Estimated tax to be collected: \(\$ 0.00\) \\
\hline NEW PROVIDENCL, PA 17560-9680 United States & Grand Total: \$9.76 \\
\hline Credit Card transactions & March 28, 2017:\$9.76 \\
\hline
\end{tabular}

To view the status of your order, return to Order Summary.


Subscribe and Save Order Placed：March 25， \(201 /\)
Amazon．com order number：106－551 1692－6937010
Order Total：\(\$ 12.71\)
This order contains Subscribe Save items．

Shipped on March 28， 2017
\begin{tabular}{|c|c|c|}
\hline \multicolumn{2}{|l|}{Items Ordered} & \multirow[t]{2}{*}{Price
\(\$ 14.95\)} \\
\hline \multicolumn{3}{|l|}{\multirow[t]{3}{*}{\begin{tabular}{l}
1 of：5－HIP 100 mg in Vegan Capsules for Better Absorption－Non－GMO，No Soy，Made in USA I Nested \(\$ 14.95\) Naturats 5－HTP｜Helps to Improve Your Overall Mood，Aids \\
Sok by：Nesied Maturat（seler profie）｜Procurt question？Ask sieter
\end{tabular}}} \\
\hline & & \\
\hline & & \\
\hline \multicolumn{3}{|l|}{Condtion：New} \\
\hline \multirow{3}{*}{Shipping Address： Geraid E．Groff} & \multicolumn{2}{|l|}{Item（s）Subtotal：\＄14．95} \\
\hline & Sheping \＆Handling： & \＄0．00 \\
\hline & Subscribe \＆Save： & －\＄2．21 \\
\hline NEW PROVIDENCE，PA 17560－9680 & \multicolumn{2}{|l|}{\multirow[b]{3}{*}{\begin{tabular}{l}
Total before tax：\＄12．71 \\
Sales Tax：\(\$ 0.00\)
\end{tabular}}} \\
\hline \multirow[t]{2}{*}{United States} & & \\
\hline & & \\
\hline \multirow[t]{2}{*}{Shipping Speed： Standard Shipping} & \multicolumn{2}{|l|}{\multirow[b]{2}{*}{Total for This Shipment：\＄12．71}} \\
\hline & & \\
\hline
\end{tabular}

\section*{Payment information}
\begin{tabular}{|c|c|}
\hline Payment Method： & Item（s）Subtotal；\＄14．95 \\
\hline \multirow[t]{2}{*}{Gift Card \({ }^{\text {a }}\) Last digit} & Shipping \＆Handling：\(\$ 0.00\) \\
\hline & Subscribe \＆Save：－\(\$ 2.24\) \\
\hline \multirow[t]{2}{*}{Billing address Gerald t．Groff} & Total before tax：\(\$ 12.71\) \\
\hline & Fstimated tox to be collected：\(\$ 0.00\) \\
\hline NEW PROVIDENCE，PA 17560－9680 & ， \\
\hline United States & Grand Total：\＄12．71 \\
\hline Credit Card transactions & March 28，2017：\＄12．71 \\
\hline
\end{tabular}

To view the status of your order，return to Order Summary．

Condtions of Use I Prinimy Natice of 1996－201B，Amazon．com，tic，or its affiaters


Amazon.com-Order Iffaş

\section*{amazoncom}

Final Details for Order \#114-3342764-5468206
Print this page for your records.
Subscribe and Save Order Placed: September 25, 2017
Amazon.com order number: 114-3342764-5468706
Order Total: \(\$ 4.93\)
This order contains Subscribe \(\&\) Save items.

Shipped on September 28, 2017
\begin{tabular}{|c|c|}
\hline Items Ordered & Price \\
\hline 1 of: Nature Made Magnesium) 250 Mg Softgel, 90 Count Sold by: Ainisan.com Survies, lime. & \$7.59 \\
\hline \multicolumn{2}{|l|}{Corution: New} \\
\hline & Item(s) Subtotal: \$7.59 \\
\hline Shipping Address: & Shipping \& Handing: \(\$ 0.00\) \\
\hline Gerald E. Groff & Subscribe \& Save: - \$1.14 \\
\hline & Your Coupon Savings:-\$1.52 \\
\hline \multicolumn{2}{|l|}{NEW PROVIDENCF, PA 17560-9680} \\
\hline United States & Total before tax: \(\$ 4.93\) \\
\hline & Sales Tax: \$0.00 \\
\hline \multicolumn{2}{|l|}{Shipping Speed:} \\
\hline Standard Shipping & Total for This Shipment: \$4.93 \\
\hline
\end{tabular}
\begin{tabular}{|c|c|}
\hline \multicolumn{2}{|l|}{Payment information} \\
\hline Payment Method: & Item(s) Subtotal: \(\$ 7.59\) \\
\hline Last digits & Shipping \& Handling: \(\$ 0.00\) \\
\hline Gift Card & Subscribe 8 Save: \(\$ 1.14\) \\
\hline & Your Coupon Savings: \(\$ 1.52\) \\
\hline Billing address Gerald E. Groff & Total before tax: 8.7 .93 \\
\hline & Total before tax: \$4.93 \\
\hline NEW PROVIDTNCT, PA 17560-9680 & Estumated tax to be collected: \(\$ 0.00\) \\
\hline United States & Grand Total: \$4.93 \\
\hline Credit Card transactions & September 28, 2017:\$4.93 \\
\hline
\end{tabular}

To view the status of your order, return to Order Summary.

Condions of yes I Pinacy Notice 01996 2018, Amazon_com, tre, or its attifates


\section*{amaxoncom}

Final Details for Order \#114-5774673-9957844
Print this page for your necords.
Subscribe and Save Order Placed: September 25, 201 /
Amazon.com order number: 114 5774673-9957844
Order Total: \(\$ 11.75\)
This order contains Subscribe \(\$ \mathbf{8}\) Save items.

Shipped on September 29, 2017
Items Ordered
1 of: Jamow Formulas Adrenal Optimizer, Supports Adrenal Renewal and Stress Reduction, 120 rabs \(\$ 13.82\)
Sobl ty: Amazoncom Sevves, me:
Gondtun: New
\begin{tabular}{|c|c|}
\hline Shipping Address: Gerald E. Groff & \begin{tabular}{l}
Item(s) Subtotal: \(\$ 13.82\) \\
Shipping \& Handling: \(\$ 0.00\) \\
Subscribe \& Save: -\$2.07
\end{tabular} \\
\hline NEW PROVIDENCE, PA 17560-9680 United States & \begin{tabular}{l}
Total before tax: \(\$ 11.75\) \\
Sales Tax: \(\$ 0.00\)
\end{tabular} \\
\hline Shipping Speed: Standard Shipping & Total for This Shipment: \$11.75 \\
\hline
\end{tabular}

\section*{Payment information}


To view the status of your order, return to Qrder Summary.


\section*{amazoncom}

Final Details for Order \#\$14-1189342-9434644
Print this page for your records.
Subscribe and Save Order Placed; October 24, 2017
Amazon.com order number: 114-1189342-9434644
Order Total: \(\$ 9.53\)
This order contains Subscribe fave items.

Shipped on October 26, 2017


\section*{Payment information}

\section*{Payment Method:}

Gift Card
Billing address
Gerald E. Gruff
Nr PROVIDENCE, PA 17S60-9680
United States

Credit Card transactions

Item (s) Subtotal: \(\$ 27.64\)
Shipping 8. Handing; \(\$ 0.00\)
Subscribe \& Save: \(\$ 4.15\)
Total before tax: \(\$ 23.49\)
Estimated tax to the collected: \(\$ 0.00\)
Gift Card Amount: \(\mathbf{- \$ 1 3 . 9 6}\)
Grand Total: \(\$ 9.53\)
October 26, 2017:\$9.53 October 26, 2017:\$9.53

To view the status of your order, return to Order Summary.


Final Details for Order \#114-3301320-7630626
Print this page for your records.
Subscribe and Save Order Placed: November 17 2010 - v ing bottles \(2+17+2018\)
Amazon, com order number: \(114-3301320-7630626\)
Order Total: \(\$ 10.18\)
This order contains Subscribe \& Save items.
Shipped on December 5, 2016


\section*{Payment information}

Payment Method:
```

Gift Card
Banling address
Gereld E. Groff
NEW PROVIDENCE, PA 17560 9680
United Stater

```

\section*{Credit Card transactions}

Items) Subtotal; \(\$ 11.98\) Shipping \& Handling: \(\$ 0.00\) Subscribe \& Save: - \(\$ 1.80\)

Total before tax: \(\$ 10.18\) Estimated tax to be collected: \(\$ 0.00\)

To view the status of your order, return to Order Summary.



6

\section*{amazoncom}

Final Details for Order \#112-3125450-7215422
Print this page for your reconds.
Subscribe and Save Order Piaced: December 9, 2017
Amazon.com order number: 112-3125450 7215472
Order Total: \$11.57
This order contains Subscribe \& Save items.

Shipped on December 12, 2017


\section*{Payment information}
\begin{tabular}{|c|c|}
\hline Payment Method; & Item(s) Subtotat: \$15.96 \\
\hline | Last digits & Shipping \& Handling: \$0.00 \\
\hline Gift Card & Subscribe \& Save: -\$2.39 \\
\hline Billing address & Your Coupon Savings: \(\$ 2.00\) \\
\hline Gerald E. Groff & \\
\hline & Total before tax: \$11.57 \\
\hline NEW PROVIDENCE, PA 1/560-9680 & Estumated tax to be collected: \(\mathbf{\$ 0 . 0 0}\) \\
\hline United States & Grand Yotal:\$11.57 \\
\hline Credit Card transactions & December 12, 2017:\$11.57 \\
\hline
\end{tabular}

To view the status of your order, return to Order Summary.


Case 5:19-cv-01879-JLS Document 36-2 Filed 02/14/20 Page 101 of 356


Affidavit A

\title{
Equal Employment Opportunity Policy Statement
}

\section*{}

LMTEDSTMTES
POSTH SERVCE

March 29, 2018

\section*{Equal Employment Opportunity Policy Stabement}

The Unimed States Postal Service (Postal Servicerw) reatims its long-atanding commitrnent to equality of opportunity in every aspect of emptoyment Equal ermployment opportunity (EEO) is not only a tegai requinement under our nation's taws, but atso as businiess imperative. EEO is a critical component of the Poctal Service's efforts to recrut, develop. and retain the most qualified. diverve workforce to suppoft our organization's strategic mission of delivering to avery household in America

It is the policy of the Postal Service thet ell employees and applicants for employment be afforded equal opportunities in employment without regerd to race, color, sex (inctuding pregnancy, sexual orientation, and gender idandity, inctuding transgender status), national origin. religion, age ( 40 or over). genetic information, disability, or retatiation for engaging in an EEO-protacted activity. As part of its program of equal employment opportunity. Whe Pastal Service prohibits discrimination or harassment besed on any of these categories. In addition, it is also the policy of the Postal
Service to prohbit discrimination or harasement based on marital status: status as a parent, and past, present. of futhere militery service. All employees must refrain from practicing or toverating discrimination or harascrment.

Employees found to have taken actions that viokate this policy and our country's EEO kaws may be subject to corrective action up to and inctuding removal from the Postal Service.

All of us, executives, managers, supervisors, and employees, share in the responsibility for successtuly incorporating the Postal Service's policy on equal employment opportunity in every tispect of our duties and complying whth this country's EEO laws.


\footnotetext{

Yhement na rowe wotc
}



UATIEDSH015S
POSTAL SEKMCF

March 10. 2015

\section*{Equal Employment Opportunity Policy Statement}

The United States Postal Service (Postal Service \({ }^{\text {"4 }}\) ) reaffirms it long-standing commitment to equality of opportunity in every aspect of employment Equal employment opportunity (EEO) is not only a legal requirement under our nation's taws, but also a business mperative. EEO is a critical component of the Postat Service's efforts to recrut. develop, and retain the most qualitied. diverse workforce to support our organization's strategic mission of detivering to every household in America.

It is the policy of the Postat Service that all employees and applicants lor employmens be afforded equal opportunites in employment without regard to race, cobor, sax Iircluding gender identity and gender stereotypes), national origin, religion. disability, or retaliation for engaging in an EEOprotected activity. As part of is program of equat employment oppontunity. the Postal Service prohubits discrimination or harassment based on any of these categonies. In addition, it is also the policy of the Postal Service to protibit discrimination or harassment based on ege. genetic information. sexual orientation, maniat status, status as a parent and pest present, or future military service. All employees must refrain from practicing or toleraing discrinmination or harassment.

Employees found to have raten actions that violate this policy and our countrys EEO laws may be subject to corrective action up to and moluding removal from the Postal Service

All of us, executives managers. supervisors, and employees, stare in the responsibility for successfully incorporating the Postal Service's policy on equai employment opportunity in every aspect of our duties and complying with this country's EEO laws.



Affidavit \(A\)

March 10.2015

\section*{Equal Employment Opportunity Policy Statement}
 equakty of opportunty to every aspect ol employment Equat empoyment oppotunty \(\operatorname{ZEED}\) is :ot only a legal requrement uder oum nation's laws, out also a oustess mperatwe EEO S a
 aiverse workfore to suppry our olpanizavon's stratege mussion of detvenng th every househoul in America
 Equal opportuntios in erploprent whout egard te race color sex irclubing gender inernty

 atohbits discramination or narassment based on any of mese catayy es in adction, it is alisethe


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 be suofeci to corecture acion wo 10 and motuding removal trom se Posial Servee

All of us cxicusives. manage's syoprysors, and empioyens. sha:e in the tesconsibility for successhtly incorporating the postal Services potey on equal emphomert opporinnty evcry aspect of our auties and comphing with this country's EEO Sws


\section*{Case 5:19-cv-01879-JLS Document 36-2 Filed 02/14/20 Page 105 of 356}

\section*{INSTRUCTIONS FOR COMPLETING AFFIDAVIT \\ (Complainant)}

Note: You are entitled to have a representative assist you in completing your affidavit statement. If a representative assists you, begin your statement by stating the name, title, and address of your representative.
1. Type or use black ink.
2. Complete items 1 through 6 on PS Form 2568-A.
3. Begin your statement on the first line after the Privacy Act Notice. Begin at the left margin and use all the space on the line until you reach the right margin. Record your statement in block form. Do not skip lines, indent paragraphs or leave blank spaces.
4. Answer all questions in complete sentences and in narrative form. Do not use abbreviated terms or acronyms.
5. Date and sign each page of the U.S. Postal Service Equal Employment Opportunity Investigative Affidavit (PS Form 2568-A).
6. Equal Employment Opportunity Investigative Affidavit (Continuation Sheet) is provided for additional space. You may photocopy the continuation sheet if additional sheets are needed. Record page numbers and case numbers at the top of each continuation sheet and sign and date each sheet. If you cross out a word or insert a word or make any changes in the statement, please initial above the change.
7. After writing the last sentence on the last page of your affidavit, write the phrase, "End of Statement" and draw an " \(X\) " over the remaining blank lines and sign your name on one of the lines of the "X." Remember to sign and date the bottom of each page.
8. If you are claiming compensatory damages, you must complete PS Form 2569C, EEO Investigative Affidavit (Continuation Sheet/Compensatory Damages), sign and date that page and attach it to your affidavit.
9. Please remember to sign the Certification page (PS Form 2571). Record the number of pages and case number at the top of the form and sign and date the form in the lower portion of the Certification page, under the section titled, "Declaration".
10. Return all original forms to the Investigator.

If you have any questions regarding the completion of these forms, contact the EEO Investigator assigned to this complaint.

Track Another Package +

Tracking Number. 9510810826768152272316
Expected Delivery by
MONDAY
4. June
by
8:00pm(

Q Delivered
June 4, 2018 at 9:31 am Delivered, Left with Individual BLANDON, PA 19510

Get Updates \(V\)
\begin{tabular}{lc} 
Text \& Email Updates & \(\checkmark\) \\
\hline Proof of Delivery & \(V\) \\
\hline
\end{tabular}

Tracking History

June 4, 2018, 9:31 am
Delivered, Left with Individual
BLANDON, PA 19510

Your item was delivered at 9:31 am on June 4, 2018 in BLANDON, PA 19510. The item was signed for by C LAW.

June 2, 2018, 5:14 pm
Delivery Attempted - No Access to Delivery Location
BLANDON, PA 19510

June 2, 2018, 8:18 am
Out for Delivery
BLANDON, PA 19510

\author{
June 2, 2018, 8:08 am \\ Sorting Complete
}

BLANDON, PA 19510

June 2, 2018, 7:00 am
Arrived at Post Office
BLANDON, PA 19510

June 2, 2018, 3:20 am
Arrived at USPS Regional Facility
LANCASTER PA DISTRIBUTION CENTER

\author{
June 1, 2018, 5:32 pm \\ Departed Post Office \\ EMMAUS, PA 18049 \\ June 1, 2018, 4:46 pm \\ USPS in possession of item \\ EMMAUS, PA 18049
}

\section*{Product Information}

\section*{Track Another Package +}

\section*{\(\mathcal{E}\) Delivered}

June 2, 2018 at 1:35 pm Delivered, Left with Individual NEW PROVIDENCE, PA 17560

Get Updates \(V\)
\begin{tabular}{lc}
\hline Text \& Email Updates & \(\vee\) \\
\hline Proof of Delivery & \(\vee\) \\
\hline Tracking History & \\
\hline
\end{tabular}

Your item was delivered at 1:35 pm on June 2, 2018 in NEW PROVIDENCE, PA 17560. The Hem was signed for by G GROFF.

June 2, 2018, 8:34 am
Out for Delivery
NEW PROVIDENCE, PA 17560

June 2, 2018, 8:24 am
Sorting Complete
NEW PROVIDENCE, PA 17560

June 2, 2018, 6:47 am
Arrived at Post Office
QUARRYVILLE, PA 17566

June 2, 2018, 6:38 am
Arrived at USPS Facility
QUARRYVILLE, PA 17566

June 2, 2018, 5:53 am
Departed USPS Regional Facility
LANCASTER PA DISTRIBUTION CENTER

June 2, 2018, 3:20 am
Arrived at USPS Regional Facility
LANCASTER PA DISTRIBUTION CENTER

June 1, 2018, 5:32 pm
Departed Post Office
EMMAUS, PA 18049

June 1, 2018, 4:46 pm
USPS in possession of item
EMMAUS, PA 18049

\section*{David Crossett <david@cornerstonelaw.us>}

Thu 1016 ROLE 350 Pv

Gerald Groff

Hello Gregory I have received your email.
Thank you.
Dand

David W. Crossett. Esq.
8500 Allentown Pike. Suile 3
Blandon, PA 19510
p 610-926-i875
f484-930-0054
david@cornerstoneiaw.u:

Origina Message
From: bnos, Gregory E Allentown. PA Contractor <aregory.Eones2@usps.gov>
Seqt: Monday, October 15, 2018 8:08 PM
Fo: David Crossett edavioucornerstonelaw.us:
Ce: Gerald Groff
Subjec: Gerald Groff-4C-170-0030 18: Amended Affidavit for 14 Day Suspension

Good morning Mr. Crossets,

I contacted your office on Monday, October 15,2018, to inform you that I am in receipt of Gerald Groff's
amended chaim (Notice of 14 Day Paper Suspension). I have prepared an affidavit tor this claim. have placed a copy an the mail for you and your client.

I am aiso providing an electronic copy for your use as i noticed that for the initial affidavit the response was typed. Whict was excellent for me.

Pease see attached documents for your client's review and response. Please confim receipt by replying back to this message.
https://uspsemail.usps.gov/owa/ \begin{tabular}{c} 
CONFIDENTIAL \\
00110
\end{tabular} \begin{tabular}{c} 
Affidavit A \\
Pag\&/fderfl8
\end{tabular}

For this Claim you will only have 10 days from the date of receipt to respond. If you have any questions please e-mall or call me. If the purview/basis Religion (Evangelical Christian) has changed please alert me so that I can modify the affidavit.

Thanks.
Gregory

\author{
Gregory E. Jones, 5 r \\ Independent ELO Investigator \\ Phone: 510-791-6475 \\ Fax: 610-797.6453 \\ Confidentiality Notice - Official Business
}

THIS IS INIENDED FOR THE SOLF USF OF THE INDIVIOUAL OR ENTITY TO WHICH IT IS ADDRCSSED AND MAY CONTAIN INFORMAIION THAT IS PRIVILEGED. CONFIDENTIAL, AND EXEMPT TROM DISCLOSURE UNDER APPLICABLE LAW. IF THF RFADER OF THIS COMMUNIGATION IS NOT THE NTENDED RECIPIENT OR THE EMPLOYEE OR AGENT RESPONSIBLE FOR DELIVERING THF MESSAGC TO IHE INTENDED RECIPIFNT, YOU ARE AFRERY NOTIFIED THAI ANY DISSEMINATION DISTRIBUTION, OR COPYING OF THIS COMMUNICAIION MAY BE STRICTLY PROHIBITED. IF YOU HAVF RECEVLD THIS COMMUNICATION IN ERROR, PLEASE NOIIFY ME IMMEOIATELY BY TELEPHONE.

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UNTEDSTATES
POSTAL SERVKE: (1)
EEO Investigative Affidavit (Witness)
\begin{tabular}{|c|c|c|}
\hline Page No. & No. Pages & Case No. \\
1 & 12 & \(4 \mathrm{C}-170-0030-18\)
\end{tabular}
\begin{tabular}{|l|l|l|l|l|}
\hline \begin{tabular}{|l|l|l|}
\hline 1. Affiant's Name (Last, First, Mi) \\
Hess, Brian, M.
\end{tabular} & \begin{tabular}{l} 
2. Employing Postal Facility \\
Holtwood Post Office
\end{tabular} \\
\hline \begin{tabular}{l} 
3. Position Title \\
Postmaster
\end{tabular} & \begin{tabular}{l} 
4. Grade Level \\
18
\end{tabular} & \begin{tabular}{l} 
5. Postal Address and Zip +4 \\
55 \\
Holtyoown Road \\
Holt, PA 17532-9998
\end{tabular} & 6. Unit Assigned \\
\hline
\end{tabular}

\section*{Privacy Act Notice}

Privacy Act Nofice. The collection of this infomation is authorized by the Equal Employment Opportunity act of 1972, 42 U.S.C. § 2000e-16; the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. §633a; the Rehabilitiation Act of 9973 , as amended. This information will be used to adjudicate complaints of alleged discrimination and to evatuate the effectiveness of the EEO program. As a routine une, this infomation may be disclosed to an aperopriate government agency, domestic or forengn, for law enforcemen purposes, where pertinent, in a legal proceading to which the USPS a a party or has an inderest, to a government agency in order to obtain infomation reievant to a USPS decision conteming emptoyment, securty ciearances, contracts licenses, grents, permite or other benefits; to a government agency upon ifs request when relevant to its decision conceming ersiployment, security clearances, securify or suitability investigations, contracts, bicenses, grants or oither beneffits:
to a congressional office at your request to an expert, consuftant, of other person under contract with the USPS to fuffill an agency friction: to the Federal Recoros Center for starige; to the Office of Management and Budget for review of private relief legislation, to an independent cortified public accountant during an offoial audit of USPS finances; to an investigator, administrative judge or complatnts examiner appointed by the Equal Employment Opportunity Commission for Investigation of a formal EEO complaint under 29 CFR 1614 ; to the Merit Systems Protection Boardi or Office of Special Counsel for proceedings or investigations involving personnel practices athd other maflefs with their jurisdiction; and to a habor crganivation as requitsed by the National Lakor Relations Act. Under the Privacy Act provision, the infermation requested is voluntary for ihe complainant, and for Postal Service employees and cher witnesses.

\section*{USPS Standards of Conduct}

Postal Service regulations require all postal employees to cooperate in any postal Investigation.
Faliure to supply the requested infomation could resuit in disciplinary action. (ELM 686)
Statemert (Continus on Fom 2569 if additionat space is requirod. Fom unill guto-create if using Ahcrosof Word)
4. Please state your full name, current position title and grade tevel.

RESPONSE: Brian M. Hess
Postmaster
EAS 18
2. Please state your current work location, telephone number, maling and e-mail address and telephone number.
RESPONSE: Holtwood Post Office
55 Drytown Ra
Holtwood, PA 17532
717-284-2850
brian.m.hess(i)usps gov
3. What position did you hold during the time period in this complaint (December 2017 and January 2018) if different from that in question number 1?
RESPONSE: Same position information as question number 1.

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


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\begin{tabular}{|c|c|c}
\hline Page No. & No. Pages & Case No. \\
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\end{tabular}
4. Who were your first and second managers that supervised you during the time period in this complaint? Identify each by full name, job title, e-mail address and telephone number.
RESPONSE: My manager is:
Keith Krempa
Manager Post Office Operations keith.r.krempa/2usps.qov 717-396-6985

I do not have a second manger.

\section*{RELIGION ALLEGATION}
5. For the record, please identify your religion. RESPONSE: I am a Christian, saved by God's grace.
6. Were you aware of the Complainant's religion the time period in this complaint? If so, what did you believe his religion to be, and how and when did you become aware?
RESOPNSE: Yes, I was aware of Gerald's religion. Gerald informed that he was a born again Christian when he inquired about transferring to the Holtwood Post Office in July of 2016.

\section*{CLAIM 1: COMPLAINANT WAS GIVEN A 7 DAY SUSPENSION}
7. Complainant alleges that you issued him a 7 Day Suspension?

Did you issue Complainant the 7 Day Suspension? If so, please provide the date the suspension was issued.
RESPONSE: Yes, lissued a seven day suspension on January 16, 2018.
8. Were any other management officials involved the decision (concurring official)? If so, please identify each by name and position titte, telephone number and e-mail address and explain how he/she was involved.
RESPONSE: Yes, Manager Post Office Operations Keith Krempa was the concurring official.
Keith Krempa
Wanager Post Office Operations
717-396-6985
keith r.krempaousps goy
I met with Keith Krempa on December 22, 2018 and discussed the request for discipline for Gerald E. Groff with him.

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


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UNITED STATES
POSTAL SERVICE (8)

\section*{EEO Investigative Affidavit (Continuation Sheet)}
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\hline Page No. & No. Pages & Case No. \\
3 & 12 & \(4 \mathrm{C}-170-0030-18\)
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9. What led to Complainant being given a 7 Day Suspension? Please explain fully.

RESPONSE: Gerald E. Groff was given a seven day suspension for refusing to report to work to deliver Sunday Anazon at the Holtwood Post Office on December 3, 2017 and December 17, 2017. (Gerald E. Groff was previously issued a Letter of Warning on June 9, 2017 for failing to report to work as scheduled to deliver Sunday Amazon at the Lancaster Carrier Annex.) Gerald E. Groff was scheduted for Amazon Sunday delivery both on December \(3^{\text {rd }}\) and December \(17^{\text {th }}\) 2017, but he refused to work due to his religious beliefs. Gerald E. Groff has been informed on several occasions in the past that his start time on Sundays could be adjusted for him to attend his church service. Gerald has declined that accommodation and states the only accommodation that he will accept is having the whole day of Sunday off as a day of rest. At the time of the discipline being issued the Holtwood Post Office had three rural carrier associates: Gerald E. Groff, Justin M. Tekely and Shella Moyer. All three rural carrier assoclates (Gerald, Justin and Sheila) had signed the Sunday/Holiday Amazon Volunteer List requesting NOT to work Sundays. In order to follow the National Rural Letter Carriers Association union contract (since there were no Sunday/Holiday volunteers at the Holtwood Post Office) I scheduled the rural carrier associates starting with the junior rural carrier associate and made a rotation for the Sundays that Amazon would be delivered at the Holtwood Post Office.
Sheila Moyer was injured on duty on December 1, 2017 and out on extended leave, which only left Gerald E. Groff and Justin Tekiey to rotate the Sundays that delivery would be needed at the Holtwood Post Office. It should be noted that Justin Tekely attends church and his start time was adjusted so that he could attend his church services on the Sundays that he was scheduled.
10. Was an investigative interview (II) conducted? If so, who conducted the II and on what date? RESPONSE: Yes, I conducted a pre disciplinary interview on December 20, 2017 at 1130 AM. Gerald E. Groff, Bartara Callahan (National Rural Letter Carries' Association union steward) and myself were present.
11. During the II was the Complainant given a reason the II was being conducted and an opportunity to explain the circumstances surrounding the events that participated the issuance of the 7 Day Suspension? RESPONSE: Yes, Gerald Groff was informed that the pre disciplinary interview was for his failure to report as scheduled for Amazon Sunday delivery at the Holtwood Post Office. He was also given the opportunity to answer questions and provide any additional information that he felt pertinent to the investigation.
3. If 50 , what explanation was provided by Complainant and to what extent, if any, did it factor into the decision to issue the 7 Day Suspension? Please explain fully.
RESPONSE: Gerald E Groff did acknowledged that he knows it is his duty to report to work as scheduled and acknowledged that he understood that Sunday work may be required as stated in the National Rural Letter Carriers' Association's Contract Article 30.2.P titled Sunday Work. Gerald stated that if he worked on December \(3^{\text {rd }}\) and December \(17^{\text {th }}\) that he would be working seven days straight. Gerald was not scheduled all seven days at the Holtwood Post Office. Gerald opted to work at the Quarryville Post Office on the days that he was not scheduled to work at the Holtwood Post Office for his own benefit. I explained to Gerald E. Groff there was not a written rule in the Nationa! Rural Letter Carriers' Association's contract that forbid rural carrier associates from working more than seven days straight. National Rural Letter Carrier Union Steward Barbara Callahan also confirmed and further explained to Gerald E. Groff that there is no contract clause that excludes rural carrier associates from working more than seven days in a row. Gerald E. Groff also confirmed that he has been offered the religious accommodation of a later start time on Sundays to be able to attend his church services. However, Gerald E. Groff has refused to accept that accommodation saying it is unacceptable to him. The only accommodation

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


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EEO Investigative Affidavit (Continuation Sheet)
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that would satisty his religious accommodation request would be to have the whole day of Sunday off.
12. Prior to the investigative interview (if any) and the subsequent 7 Day Suspension, was the Complainant apprised of any unacceptable attendance issues in the past? If so, when, by whom, and how was this communicated to him? If in writing, please provide a legible copy of the documentation. RESPONSE: Yes, prevlously Geraid E. Groff was issued a Letter of Warning for failing to report as scheduled for Sunday Amazon delivery at the Lancaster Carrier Annex. The letter of warning was issued by Lancaster Carrier Annex Supervisor Diane Evans. A copy of the Letter of Warning is attached to the affidavit.
13. Was Complainant's religion a factor when he was given the 7 Day Suspension? If so, please explain why it was a factor.
RESPONSE: No, Gerald E. Groff's religion was not a factor. The main factor for issuing the 7 Day Suspension was Gerald E. Groff's failure to seport to work as scheduled. In order to be impartial and fair I am required to abide by the National Rural Letter Carriers' Association's Union Contract. The following is from the National Rural Letter Carriers' Contract Articie 30 Section 2 Letter P Sunday Work:
Ain office-wide list will be estabiished 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 work prior to selecting qualified employees from the list. The Employer will make every reasonable effort to avoid requiring substitutes, RCAs, and RCRs not on the list to work.
The Holtwood Post Office did not have any rural carrier associate volunteers for the Sunday/Holiday Work list, so a schedule was created starting with the junior rural carrier associate Sheita Moyer covering the first Sunday. (Volunteer List for that period of time is attached.) If I did not abide by the union contract and address attendance issues I would be failing the United States Postal Service and creating an unhealthy work environment for other employees who are reporting to work as scheduled.
14. Complainant identified Justin Tekely as someone who was treated more favorably (i.e. when allegedly he received preferential treatment on October 10, 2017, a high volume mail day when you assisted with the delivery of his route and did not provide assistance to Complainant. Please provide:
a. Mr. Tekely's position fitle, grade, work location and the name of his supervisor. RESPONSE: Justin M. Tekely

Rural Cartier Associate
Strasburg Post Office
Current Supervisor: Janet Hernandez
b. If known please provide his religion

RESPONSE: To the best of my knowledge Justin M. Tekely is a Christian as he attends an independent Bible church.
c. Please respond to Complainant's allegation that Mr. Tekely was treated more favorably when allegediy he received preferential treatment on October 10, 2017, the day after Columbus Day a high volume mail day when you filled your vehicle multiple times and assisted with the delivery of his route and did not offer assistance to Complainant.

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


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RESPONSE: I belleve that Gerald E. Groff maybe confused with his dates, because according to my records Gerald E. Groff did not work at the Holtwood Post Office on October 10, 2017. I believe Gerald E. Groff may be referring to November 13, 2017 the day after Veteran's Day. On that day Gerald E. Groff, Justin H. Tekely and Sheila Groff were all scheduied and working. On November 13, 2017 Gerald Groff was working on rural route 1 and Justin M. Tekely was working on rural route 2. Justin M. Tekley at the time was a newer rural carrier associate with about 8 months of part time experience. This was the first major day after a holiday that Justin M. Tekely was working. The volume of mail and parcels on the day after a holiday can be overwhelming for an inexperienced rural carrier associate. As a manager 1 am responsible for managing the work load. Since I had been training and mentoring Justin M. Tekely over the past 8 months I knew that the day after Veterans Day would be challenging and making the final dispatch truck a possible issue. As with all new employees I attempt to manage the mail to help the new rural carrier associates be successful with making the final dispatch truck each day. If you overwheim new employees with an impossible work load the chances are much greater that they will get frustrated and quit. Since all the rural carrier associates where working on the routes on November 13, 2017 I delivered parcels that day to take some of the stress off of Justin Tekely. Below are the mail volume comparison for Gerald E. Groff and Justin Tekely on November 13, 2017:

Route 1 Gerald E. Groff
Delivery Point Sequence Mail-2,350 pieces
Parcels-142
Route 2 Justin M. Tekely
Delivery Point Sequence Mail-3,421 pieces
Parcels-227
As you can see Justin M. Tekely had more volume of mail and parcels and was tess experienced, that is way I gave him the additional assistance based on having more of a work load and knowing that he was still learning to do the job efficlently. Gerald E. Groff ended his tour of duty on November 13,2017 at 1651 hours. Justin M. Tekely ended his tour of duty at 1910 hours. Based on the end times you can see that Gerald E. Groff did not require any additional assistance. Justin M. Tekely still struggled to complete the route even with the additional assistance that I provided.
All three rural routes at the Motwood Post Office have different timed evaluations and the mail volumes for each route vary daily. Plus when you factor in training new employees on the routes there are going to be times when one route gets more assistance than another route. As a manager on November 13, 2017 l assisted the routes that had the most mail volume and the least experienced carriers who would be jeopardy of not making the last dispatch truck. Knowing Gerald E. Groff's experience and mail volume he had on November 13, 2017 I knew he would not need additional assistance to meet the final dispatch truck that leaves the Holtwood Post Office at 1730 hours.
The mail volume recording form and Unites States Postal Service form \(\mathbf{4 2 4 0}\) for rural timekeeping are attached for documentation for November 13, 2017.
15. Complainant identified Sheila Moyer as someone who was treated more favorably when allegedly she received preferential treatment on October 10, 2017, a high volume mail day when you assisted with the delivery of her route and did not provide assistance to Complainant. Please provide:

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


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UNTEDSTATES
EEO Investigative Affidavit (Continuation Sheet)
\begin{tabular}{cc|c|c} 
Page No. & No. Pages & Case No. \\
a. Ms. Moyer's position title, grade, work location and the name of her supervisor. \\
RESPONSE: \\
Sheila Moyer \\
rural carrier associate \\
Resigned from United States Postal Service \\
Brian M. Hess Supervisor when employed by United States Postal Service
\end{tabular}
b. If known please provide her religion

RESPONSE: I do not know Sheila Moyer's religion, if any.
c. Please respond to Complainant's allegation that Ms. Moyer was treated more favorabiy when allegedly she received preferential treatment on October 10, 2017, the day after Columbus Day a high volume mail day when you filled your vehicle multiple times and assisted with the delivery of her route and did not offer assistance to Complainant.
RESPONSE: : I believe that Gerald E. Groff maybe confused with his dates, because according to my records Gerald E. Groff did not work at the Holtwood Post Office on October 10, 2017. I believe Gerald E. Groff may be referring to November 13, 2017 the day after Veteran's Day. On that day Gerald E. Groff, Justin R. Tekely and Sheila Groff were all scheduled and working. On November 13, 2017 Gerald Groff was working on rural route 1 and Sheila Moyer was working on rural route 3. Sheila Moyer at the time was a new rural carrier associate and still on her probationary period. Sheila Moyer had about 4 months of part time experience. This was the first major day after a holiday that Sheila Moyer was working. The volume of mail and parcels on the day after a holiday can be overwheiming for an inexperienced rural carrier associate. As a manager I am responsible for managing the work load. Since I had been training and mentoring Sheila Moyer over the past 4 months I knew that the day after Veterans Day would be challenging and making the final dispatch truck a possible issue. As with all new employees I attempt to manage the mail to help the new rural carrier associates be successful with making the final dispatch truck each day. If you overwhelm new employees with an impossible work load the chances are much greater that they will get frustrated and quit. Since all the rural carrier associates where working on the routes on November 13, 2017 I did deliver parcels that day to take some of the stress off of Sheila Moyer. Below are the mail volume comparison for Gerald E. Groff and Sheila Moyer on November 13, 2017:

Route 1 Gerald E. Groff
Delivery Point Sequence Mail-2,350 pieces
Parcels-142

\section*{Route 3 Sheila Moyer}

Delivery Point Sequence Mail-3,164
Parcels-181
As you can see Shella Moyer had more volume of mail, more parcels and was tess experienced, than Gerald E. Groff. That is way I gave her the additional assistance based on having more of a work load and knowing that she was still learning to do the job efficiently. Gerald E. Groff ended his tour of duty on November 13, 2017 at 1651 hours. Sheila Hoyer ended his tour of duty at 1855 hours. Based on the end times you can see that Gerald E. Groff did not require ary additional assistance. Sheila Moyer still struggled to complete the route even with the additional assistance that I proyided.

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


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Page No. & No. Pages & Case No. \\
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\end{tabular}

All three rural routes at the Holtwood Post Office have different timed evaluations and the mail volumes for each route vary daily. Plus when you factor in training new employees on the routes there are going to be times when one route gets more assistance than other route. As a manager on November 13, 2017 I assisted the routes that had the most mail volume and the least experienced carriers who were in jeopardy of not making the final dispatch truck. Knowing Gerald E. Groff's experience and mail volume he had on November 13, 2017 I knew he would not need additional assistance to meet the final dispatch truck that leaves the Holtwood Post Office at \(\mathbf{1 7 3 0}\) hours.
The mail volume recording form and United States Postal Service form 4240 for rural timekeeping are attached for documentation for November 13, 2017.
16. During the past year, has any other employee under your supervision been issued disciplinary action (Letter of Warning, 7 or 14 Day Suspension or Notice of Removal for Improper Conduct? If so, please provide:

No other discipline has been issued.
a. Their full name, job title and pay location RESPONSE: N/A
b. Their supervisor's name RESPONSE: N/A
c. Their religion RESPONSE: N/A
d. Please explain how he/she was disciplined. Please proyide legible documentation of the disciplinary action(s) to support your response. RESPONSE: N/A
17. Please identify the rule, regulation or policy that management relied upon when the Complainant was issued 7 Day Suspension.
RESPONSE: The charge was Improper Conduct. The following Employee and Labor Relations Manual sections were cifed:
Section 665.13 Discharge of Duties-Employees are expected to discharge their assigned duties conscientiously and effectively.
Section 665.15 Obedience to Orders-Employees must obey the instruction of their supervisors. If an employee has reason to question the propriety of a supervisor's ordier, the individual must nevertheless carry out the order and immediately file a protest in writing to the official in charge of the installation or may appeal through official channels.
Section 665.16 Behavior and Personal Habits-Employees are expected to conduct themselves during and outside of working hours in a manner that reflects favorably upon the Postal Service. Although, it is not the policy of the Postal Service to interfere with the private lives of employees, it does require that postal employees be honest, rellable, trustworthy, courteous and of good character and reputation. The federal Standards of Ethical Conduct referenced in 662.1 also contain regulations governing the off-duty behavior of postal employees. Employees must not engage in criminal, dishonest, notoriously disgraceful, immoral or other conduct prejudicial to the Postal Service. Conviction for a violation of any criminal statute may be grounds for disciplinary action against an employee, including removal of the empioyee, in addition to any other penalty imposed pursuant to statute. Employees are expected to

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


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UNITEDSTATES
POSTAL SERVKCE
EEO Investigative Affidavit (Continuation Sheet)
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maintain harmonious working relationships and not to do anything that would contribute to an unpleasant working environment.
Gerald E. Groff did not discharge his assigned duties, did not obey instruction to report to work as scheduled and his actions have been detrimental to maintaining harmonious working relationships with the rural carrier associates in the Holtwood Post Office and with the other rural carrier associates that report to the Lancaster Carrier Annex Sunday Amazon Hub.
18. Did the Complainant file a grievance on the 7 Day Suspension? If so, what is the status? (Please provide a copy of the grievance documentation.)
RESPONSE: No, grievance was filed.

CLAMM 2: COMPLAINANT'S HAS NOT RECEIVED RESPONSE TO HIS REQUESTS FOR RELIGIOUS ACCOMMODATION
19. Complainant alleges that he requested a religious accommodation on two occasions in 2018. Did you receive requests for religious accommodation from Complainant?
RESPONSE: Yes, a written request for a religious accommodation was received on January 4, 2018 and a second written request was received on March 6,2018 . The religious accommodation request received on January 4,2018 was submitted by Gerald E. Groff after 1 asked him to provide in writing what religious accommodation that he was seeking. The request in writing was requested since he had refused to accept the United States Postal Services religious accommodation of having a modified start time in order to attend his church services on Sundays.
a. If so, please explain in detail what religious accommodation was requested on each occasion and the dates that requests were received.
RESPONSE: On January 4, 2018 Gerald E. Groff presented a written request to have the entire day of Sunday off as a day of rest, not just part of it. On March 6, 2018 Gerald E. Groff presented a written request for a lateral transfer within the United States Postal Service to a position that does not require working on Sundays.
20. To your knowledge was Complainant's requests for religious accommodation denied or not responded to by management?
RESPONSE: Gerald E. Groff was sent via US Mail a response to his request on July 17, 2018. I personally also hand delivered a response to Gerald E. Groff's March 6, 2018 religious accommodation request as well to ensure he received it on July 18, 2018. The request to have all of Sunday off was not granted. Gerald E. Groff was offered the accommodation of having a modified schedule on Sunday which he refuses to accept. I also informed Gerald E. Groff on approximately June 8,2018 that attempts will be made to find volunteers to cover the Sundays that he is schedule to work.
24. Was any other management officials involved the decision to deny or not respond to Complainant's requests for religious accommodation? If so, please identify each by name and position title and explain how he/she was involved.
RESPONSE: In response to Gerald E. Groff's March 6, 2018 religious accommodation request a teleconference was held with Gerald E. Groff, Lyle Gaines (Manager Labor Relations Central PA District) and myself (Brian M. Hess Postmaster Holtwood Post Office). The teieconference was held on Monday Harch 26, 2018 at 11:15 AM at the Holtwood Post Office. Lyle Gaines led the teleconference and asked Gerald \(E\). Groff questions in regards to his religious accommodation request.

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


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UNITEDSTATES
POSTAL SERVVCE
EEO Investigative Affidavit (Continuation Sheet)
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22. Haye you received documentation from Complainant's Clergy in reference any restrictions of workdays regarding Complainant's religion? If so, when and what have you received? Please provide a copy. RESPONSE: No documentation has been received from the clergy of the church that Gerald E. Groff attends in reference to any restrictions on working Sundays. In early January 2018 Gerald E. Groff was asked to provide a written statement from his clergy about his church attendance, responsibilities at the church and Sunday requirements that his church has. Gerald E. Groff balked at asking his church for such a statement since he is not a member of the congregation. Instead, Geraid E. Groff submitted his own statement that is attached.
23. Did Complainant have any restrictions on days when he could work? If so, what are the restrictions and/or limitations?
RESPONSE: No restrictions or limitations have been submitted for Gerald E. Groff.
24. What steps were taken to accommodate Complainant's request for a lateral transfer into a position that did not require him to work on Sundays? Please explain fully.
RESPONSE: Gerald E. Groff as a rural carrier associate is a non-career employee. All United States Postal Service non-career positions (Postal Support Employee, City Carrier Assistant, Mail Handler Assistant, Rural Carrier Associate, Assistant Rural Carrier) are required to work on Sundays as written in their collective bargaining agreements. I do not know of any non-career positions that he could be transferred to that would not require working on Sundays. This accommodation was discussed on the teleconference with Lyle Gaines Manager Labor Relations Central PA District on March 26, 2018.
25. What steps were taken to accommodate Complainant's request to be off on Sundays? RESPONSE: Since June 7, 2018 when Gerald E. Groff is scheduled to work a Sunday at the Lancaster Carrier Annex Sunday Amazon Hub, Iam soliciting all the unscheduled rural carrier associates of the Lancaster Carrier Annex Sunday Amazon Hub to see if they will work for Gerald E. Groff
26. Was Complainant allowed to switch days with another employee? If so, who and how often did this occur. Please identify the employee and provide the dates that another employee worked for Complainant on Sundays.
RESPONSE: Since the implementation of the Lancaster Carrier Annex Sunday Hub that the Holtwood Post Office rural carrier associates report to on Sundays and holidays a list is maintained of rural carrier associates who volunteer to work on Sundays and holidays. The volunteer assistant rural carriers and rural carrier associates are always scheduled first. The other sural carrier associates who do not wish to work are then scheduled on a rotating basis alphabetically by last name since there are not enough volunteers. Since the volunteers are automatically schedule to work there is no rural carrier associates that Gerald E. Groff could switch with. I have offered Gerald E. Groff the opportunity to work (other than Sundays) in other offices on many occasions to help other ofices that are short staffed, but Gerald E. Groff avoids/refuses working in other offices and many times will not respond to phone messages left by other postmasters looking for assistance. The only offices that Gerald E. Groff is willing to work in is the Holtwood Post Office, Quarryville Post Office and Lancaster Carrier Annex when he is scheduled for Amazon holiday delivery. Gerald E. Groff has never requested switching days with another carrier as if would require him to work in unfamiliar oftices which he does not like to do.
On Sunday July 1, 2018 rural carrier associate Lofi Lewis from the Paradise Post Office agreed to work for Gerald E. Groff. Gerakd E. Groff was also scheduled to deliver Sunday Amazon on July 15, 2018 and I was informed by Kelly Miller, Supervisor Lancaster Carrier Annex, that she was able to cover Gerald \(E\). Groff route for that day. I do not know the name of the rural carrier that agreed to work for him on July \(\mathbf{1 5}\), 2018.

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


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EEO Investigative Affidavit (Continuation Sheet)
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a. If you did not get any volunteers to switch days with Complainant, did you mandate anyone to work on Sundays in Complainant's place? 括 not, please explain why not.
RESPONSE: When the Amazon was delivered out of the Holtwood Post Office from November 19, 2017 to January 7,2018 rural carrier associate Justin M. Tekely worked the Sundays that Gerato EGroff refused to work. The Lancaster Carrier Annex supervisors make the schedule for the Lancaster Carrier Annex Sunday Amazon Hub. 1 am not aware if they mandate anyone to work in Gerald E. Groff's place. Since Gerald E. Groff has been refusing to work Sunciays since March of 2017, I was told in the past by former Lancaster Postmaster Douglas French that they automatically scheduled extra nural carrier associate on weeks that Geraid E. Groff is scheduled because they knew that Gerald E. Groff would refuse to work.
b. If you did not mandate any other employee to work on Sundays for Complainant did you mandate overtime? If not, please explain why not
RESPONSE: Justin M. Tekely covered the Sundays that Gerald E. Groff refused to work. I never mandated that Gerald E. Groff work overtime because he refused to work on a Sunday.
27. Could you have brought someone in from another Post Office to assist with the Sunday Amazon Delivery? If so, did you? f not, please explain why not?
RESPONSE: Rural carrier associates are only responsible to their home office, excluding the Amazon Sunday/Holiday Hubs which they are assigned to be geographic area. Rural carriers cannot be forced/mandated to work in another office. During the holiday peak delivery season all the post offices received Sunday Amazon directly at their office, so rural carrier associates were working in their home offices. Also, there is a shortage of rural carrier associates in many post offices which compounds the issue of finding rural delivery assistance. Based on not being able to "mandate" other rural carrier associates to cover the Holtwood Post Office, all the other offices trying to cover their Sunday delivery operation and a shortage of ayailable rural carrier associates the idea of bringing in another rural carrier assoclate from another office is not plausible based on the all the factors.
28. Were Complainant's requests for religious accommodation submitted to DRAC or Human Resources for a response? If 80 , where was it submitted and when?
RESPONSE: I consulted with Central PA District Human Resources and was informed that the DRAC committee does not consider religious accommodation requests. Shortly after receiving the March 6, 2018 written reasonable accommodation request from Gerald E Groff I forwarded the information on to Central PA District Labor Relations Manager Lyle Gaines for guidance. Lyle Gaines reviewed the information and consulted the law department for guidance on the religious accommodation request submitted by Geraid E. Groff.
29. To your knowledge did Complainant receive a response DRAC or Human Resources regarding his religious accommodation requests? If so, what response did he receive?
RESPONSE: A written response from Lyle Gaines, Manager Labor Relations Central PA District was provided to Gerald E. Groff on July 17, 2018.
30. Was Complainant offered an accommodation? If so what religious accommodation was he offered and when (date) was it offered?
RESPONSE: Gerald E. Groff was informed that attempts would be made to find volunteers to cover his scheduled Sundays. If no volunteers are available he was offered the religious accommodation of a modified Sunday schedule, the same accommodation offered to other employees in the same situation as Gerald E. Groff. Gerald E. Groff was given the offer on July 18, 2018. On July 20, 2018 I asked Gerald E.

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

Affidavit B
CONFIDENTIAL
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Groff if the resolution and religious accommodation offered was acceptabie. He stated that it was not and that it had been offered to him before and that is not what he is asking for.
31. Was Complainant's religion a factor when his requests for a religious accommodation was denied or not responded to? If so, please explain why it was a factor.
RESPONSE: Gerald E. Groffs religion was not a factor for a denial or nonresponse. Gerald E. Groff was offered a religious accommodation. However, he refuses to accept the accommodation that the United States Postal Service has offered.
32. During the past year, has any other employee requested a religious accommodation and their request(s) were granted? If so, please provide:
a. Their full name, job title and pay location RESPONSE: Yes, Justin M. Tekley (rural carrier associate, Strasburg Post Office) was given a religious accommodation of a modified start time to attend his church service on Sundays when scheduled to deliver Sunday Amazon out of the Holtwood Post Office between November 19, 2017 and January 7, 2018.
b. The name of their supervisor(s) RESPONSE: Brian M. Hess Postmaster Holtwood Post Office
c. Their religion

RESPONSE: Christian
d. Please explain the reason for the difference in treatment for each employee you listed. Please provide legible documentation of the religious accommodation request to support your response. RESPONSE: There wasfis no difference in treatment. All employees have been offered the same religious accommodation of a modified start time on Sundays to be able to attend their religlous services if they would like. The religious accommodation offered to Justin th. Tekely was vertally and there is no written documentation.
33. During the past year are you aware of any other employee whose request for religious accommodation of having Sundays as a non- work day was denied or not responded? If so, please provide:
a. Their full name, job title and pay location RESPONSE: I am not aware of any other religious accommodation request by other employees.
b. The name of their supervisor(s) RESPONSE: N/A
c. Their religion

RESPONSE: N/A
34. During the past year are you aware of any other employee whose request for a lateral transfer to a position that did not require them to work on a Sunday as a religious accommodation was treated the same as Complainant (i.e. was denied or not responded to? if so, please provide:
a. Their full name, job title and pay location RESPONSE: I aware not aware of any other employees who requested a lateral transfer for religious accommodation reasons.

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


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b. The name of their supervisors) RESPONSE: NA
c. Their religion

RESPONSE: NA
35. During the past year are you aware of any other employee whose request for a lateral transfer to a position that did not require them to work on a Sunday as a religious accommodation was granted? if so, please provide:
a. Their full name, job title and pay location

RESPONSE: No, I am not aware of any other employees granted a lateral transfers for religious accommodation reasons.
b. The name of their supervisors) RESPONSE: N/A
c. Their religion RESPONSE: NRA
e. Please explain the reason for the difference in treatment for each employee you listed. Please provide legible documentation of the religious accommodation request to support your response. RESPONSE: NA
36. Please identify the rule, regulation or policy that management relied upon when the Complainant's request for a religious accommodation was denied or not responded to.
RESPONSE: Gerald E. Groff religious accommodation request has not been denied or not responded to. Gerald E. Groff refuses to accept the religious accommodation of a modified start time on Sundays that the United States postal Service has offered him. This is the same religious accommodation that has been offered to employees in similar situations as Gerald E. Groff. As Gerald E. Groff stated today, July \(\mathbf{2 0}, \mathbf{2 0 1 8}\), in our conversation that the accommodation of a modified start time has been offered to him before and he refuses to accept that because that is not what be is asking for.
37. Did the complainant file a grievance on this claim? If so, what is the status? (Please provide a copy of the grievance documentation.)
RESPONSE: No grievance was submitted.
38. Do you have anything else to add that has not already been discussed?

RESPONSE: I would like to note that Gerald E. Groff did not follow proper procedure and was unprofessional by approaching rural carrier associates Justin Tekely and Sheila Moyer and asking them to cover him for the Sundays at the Holtwrood Post Office before a schedule was ever posted. This was unprofessional due to the fact that Justin Tekely had just come off of his probationary period and Sheila hover was still on probation. Justin Tekely and Sheila Moyer may have felt pressured by Gerald's request due to their employment status and also not knowing what the proper procedures for Sunday scheduling were. Also, there may have been peer pressure if Gerald brought this subject up in front of other carriers on the work room floor. Gerald E. Groff should have followed proper procedure and brought his scheduling concerns directly to me to address. By approaching the other carries himself he created tension in the office and appeared to be manipulating then for his benefit.


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U.S. Postal Service

Certification

Case No.
4C-170-0030-18

I have read the proceeding attached statement, consisting of 20 pages, and it is true and complete to the best of my knowledge and belief. In making this statement, I understand Section 1001, Titte 18 of the U.S. Code which states:
"Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and wiffully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representation, or makes or uses any false writing or document knowing the same to contain any faise, fictivous or fraudulent statement or entry, shall be fined not more than \(\$ 10,000\) or imprisoned not more than 5 years, or both."

\section*{Privacy Act Notice}

Privacy Act Notice. The collection of this information is authorized by the Equal Employment Opportunity Act of 1972, 42 U.S.C. \(\$ 2000\)-16: the Age Discrimination in Employmemt Act of 1967. as amended, 29 U.S.C. § 633a; the Rehabilitation Act of 1973, as amensed, 29 U.S.C. § 794a: and Executive Order 11478, as amended. This information will be ised to adjudicate complaints of alleged discrimination and to eyaluate the effectiveness of the EEO program. As a routins ase, this information may be disclosed to an appropriate gowemment agency, domestic or foreign. for law enforcement puposes; where pertinent. in a legal proceeding to whoch the USPS is a party or has an imerest: to a government: agency in erder to obtain informaton relevant to a USPS decision conceming employment, security clearances. contracts. licenses, granis, pemits or other benefits; to a government agency upon its request when relevant to its decision contcerning employment, security clearances. security or suitabinity investigations, contracts. bicentses.
grants or other benefits; to a congressional ofice at your request, to an expert, consultant or other person under contract with the USPS to fulfil: an agency function; to the Federal Resords Center for storage; to the Office of Management and Budget for review of private relief legistation: te an independent certified public accountant during an official atidit of USPS finances; to an investigator, administrative judge or complaints examiner appointed by the Equal Employment Opportunity Commission for investigation of a formal EEO complaint under 29 CFR 1614; to the A4ert Systems Protection Board or Office of Special Counsel for procesdings or imvestigations involuing personnel practices and other matters within their jurisdiction: and to a tabor organization as required by the National Labor Relations Act. Under the Privacy Aft provision, the information requested is voluntary for the complainant, and for Posta: Service emplayees and other witnesses.

USPS Standards of Conduet

Postal Service regulations require all postal employees to cooperate in any postal investigation. Failure to supply the requested infomation could resuit in disciplinary action (ELM 666).

Oath / Affirmation

Subscribed and (sworn) (affirmed) before me on this \(\qquad\) day of \(\qquad\) 2018 \(\qquad\)
Signature of EEO Complarts Investigator \(\quad\) Affiants Sigrature (Sign in the presence of EEO Investigator)

\section*{Dectaration}

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


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Amended EEO Investigative Affidavit (Witness)
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\hline \begin{tabular}{l} 
1. Affiant's Name (Last, First, MI) \\
Hess, Brian, M.
\end{tabular} & \multicolumn{2}{l|}{\begin{tabular}{l} 
2. Employing Postai Facility \\
Holtwood Post Office
\end{tabular}} \\
\hline \begin{tabular}{l|l|l|l|}
\hline 3. Position Titie \\
Postmaster
\end{tabular} & \begin{tabular}{l} 
4. Grade Level \\
EAS-18
\end{tabular} & \begin{tabular}{l} 
5. Postal Address and Zip +4 \\
55 Drytown Road \\
Hotwood, PA 17532-9998
\end{tabular} & \begin{tabular}{l} 
6. Unit Assigned \\
Holtwood Post Office
\end{tabular} \\
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\section*{Privacy Act Notice}

Privacy Act Notice. The collection of this mfomation is authorized by the Equal Employment Opporturity act of 1972, 42 U.S.C. \& 2000e-16; the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 633:; the Rehabilitation Act of 1973, as amended. This information will be used to adjudicate complaints of alleged discrimination and to evaluate the effectiveness of the EEO program. As a routine use, this information may be disciosed to an appropriate government agency, domestic or foreign, for law enforcement purposes; where pertinent, in a legal proceeding to which the USPS is \(\frac{1}{}\) party or has an interest; to a govemment agency in order to obtain information relevant to a USPS decision conceming employment, security clearances, contracts, licenses. grants, pernits or other benefits; to a government agency upon is request when relavant to its decision conceming employment, security clearances, security or suitability investigations. contracts, licenses. grants or other benefits;
to a congressionai office at your request; to an expert, consultant, of other person under contract with the USPS to fuffil an agency function; to the Federal Records Center for storage; to the Office of Minnagement and Eudget for review of private relief kegistation: to an independent certified public accountant during an official audit of USPS finances; to an investigator, edministrative judge or complaints exarniner appointed by the Equal Employment Opportunity Commission for Investigstion of a formal EEO complaint under 29 CFR 1614; to the Meril Systems Protection Board or Office of Special Counsel for proceedings or investigations involving personnel practices and other matters within Their jurisdiction; and to a labor organization as required by the National Labor Redations Act. Under the Privacy Act provision, the information requested is voluntary for the complainant, and for Postal Service employeos and other witnesses.

\section*{USPS Standards of Conduct}

Postal Service regulations require all postal empioyees to ccoperate in any postal Investigation.
Failure to supply the requested information could resuit in disciplinary action. (ELM 666)
Statement (Continue on form 2569 if adcitional soace is required. Form will auto-create if using hicusof Word)
CLAIM 3: COMPLAINANT WAS GIVEN A 14 DAY PAPER SUSPENSION
39. Complainant alleges that you issued him a 14 Day Suspension?

Did you issue Complainant the 14 Day Paper Suspension? If so, please provide the date the suspension was issued.
RESPONSE:
Yes, a 14 Day Paper Suspension was issued on October 12, 2018.
40. Were any other management officials involved the decision (concurring official)? If so, please identify each by name and position titie, telephone number and e-mall address and explain how helshe was involved. RESPONSE:

Yes, management individuals involved were Manager Post Office Operations Chris Kruppo and Attendance Control Michele Maloy. Manager Chris Kruppo was advised of the issue involving Gerald Groff refusing to work Sundays. Chris Kruppo provided concurrence before and after the discipline was written by Attendance Control Officer Michele Maloy. Michelle Maloy is the Attendance Control Officer for the Central PA District and is responsible for writing all discipline related to attendance issues.

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


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41. What led to Complainant boing given a 14 Day Paper Suspension? Please explain fully. RESPONSE:

Since March 2017 Rural Carrier Associates are required to work Sundays to deliver Amazon packages on a rotational basis. Gerald Groff has refused to work any Sundays. Gerald Groff requested a rellgious accommodation not to work Sundays. Due to the labor contract and operational needs, Gerald was offered to have an adjusted start time on Sundays so that he can attend his church services. This is the same accommodation that has been offered to other Rural Carrier Associates that would like to attend their church services. Gerald refused to accept the accommodation offered and stated that the only accommodation that he will accept is to have the whole Sunday off. Gerald also requested a job transfer to a job that does not require Sunday work. The request for the job transfer was unable to be approved because all non-career positions are required to work on Sundays per their labor contracts. In attempt to accommodate Gerald Groff's request not to work Sundays, every effort is made to find volunteer Rural Carrier Associates who are not scheduled to work to cover Gerald Groff's scheduled Sundays to work. On a few occasions other rural carrier associates have volunteered to cover Gerald Groff's scheduled Sunday.
On Sundays when Gerald is scheduled to work and no volunteers are available, Gerald still refuses to work. It is on these absences that Geraid has been issued discipline. The Sundays Gerald refused to work cited for the 14 Day Paper Suspension were June 17, 2018, August 12, 2018 and August 26, 2018. There were no volunteers on these days and Gerald refused to report to work as scheduled.
42. Was an investigative interview (II) conducted? If so, who conducted the II and on what date? RESPONSE:

Yes, an investigative interview was held on September 6, 2018 at 1130 AM. The investigative interview was conducted by myself. Present were myseff, Gerald Groff and Rural Letter Carrier Steward Christina tiller.
43. During the II was the Complainant given a reason the II was being conducted and an opportunity to explain the circumstances surrounding the events that participated the issuance of the 14 Day Paper Suspension?
RESPONSE:
Yes, it was explained to Gerald that the pre disciplinary interview was for his failure to report to work as scheduled on June 17, 2018, August 12, 2018 and August 26, 2018. It was also explained the expectations of attendance and the requirement to work on Sundays is covered in the National Rural Letter Carriers' Association Labor Contract.
Gerald Groff responded to the questions asked and was also given an opportunity to explain his reason for failing to report to work as scheduled.
a. If so, what explanation was provided by Complainant and to what extent, if any, did it factor into the decision to issue the 14 Day Paper Suspension? Please explain fully. RESPONSE:

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


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Gerald Groff stated that the religious accommodation of an adjusted start time has been offered to him, but the only religious accommodation that he would accept is to have the whole day of Sunday off because it is the Lord's Day. Gerald stated, "The reason we are here now is because no one has volunteered to work for \(m e\) ".
Gerald Groff also stated that he knows he is required to report work as scheduled and understands that the National Rural Letter Carriers' Associations labor contract does require rural carrier associates to work on Surdays when needed.
Gerald Groff's refusal to work Sundays when scheduled is in violation of the Employee and Labor Relations Manual sections \(511.43,665.41,665.15\) and the National Rural Letter Carriers'
Associations labor contract. Every effort has been made to accommodate Gerald Groff's religious accommodation request by offering an adjusted start time (as offered to other employees), as well as seeking volunteers to cover Gerald Groff's scheduled Sundays to work.
44. Was Complainant's religion a factor when he was given the 14 Day Paper Suspension? If so, please explain why it was a factor.
RESPONSE:
No
45. Please identify the rule, regulation or policy that management relied upon when the Complainant was issued 14 Day Paper Suspension. RESPONSE:

Employee and Labor Relations Manual Sections:
511.43 Employees are expected to maintain their assigned schedule.
665.15 Employees must obey the instructions of their supervisor.
665.41 Employees are required to be regular in attendance, failure to be regular in attendance may result in disciplinary action.
National Rural Letter Carriers" Association Labor Contract
Memorandum of Understanding between the USPS and NRLCA-The parties agree that rural carrier leave replacements will be assigned, as appropriate, to complete Sundayfholiday parcel deliveries.
46. Did the Complainant flle a grievance on the 14 Day Paper Suspension? If so, what is the status? (Please provide a copy of the grievance documentation.)
RESPONSE:
No, not to my knowiedge.

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


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EEO Investigative Affidavit (Continuation Sheet)
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47. Complainant has alleged that during the December 2017 you "openly mocked him on the workroom floor on more than one occasion. Complainant stated that he needed a new photo ID which you issued to him and you stated in the presence of coworkers that his photo ID picture reminded you of photos of sexual deviants who happened to be on the front page of that morning's paper.

Did that interaction take place as Complainant has described? If not, please provide your version of what was stated the reason it was stated.

\section*{RESPONSE:}

The Holtwood Post Office is a small office and the employees all work well together. We often joke around with each other lightheartedly. I did make a comment jokingly to the effect that Gerald's photo ID looked Hke a mug shot, like many times you see posted in the newspaper of individuals who are arrested. The comment was in no means done to mock him, but rather lighthearted in nature I thought and that was my intention. I cannot recall the exact words I might have said since it was almost a year ago. I have never openly mocked Gerald Groff in his presence or when he is not present Gerald never stated he was offended by the remark or I would have apologized to him and the rest of the employees If I had known it was offensive. To the best of my knowledge my comment was made once and never brought up again, so I do not know what other occasions he may be referring to.
It is common for employees to poke fun at each other in the Hoitwood Post Office and many times we laugh at ourselves. I am bald and it has been joked upon many times. Gerald has also engaged in the same type of lighthearted joking on different occasions with employees.
Example: Gerald had a photo of clerk Gini Serball and imposed it on a poster hanging above the toilet in the office battroom. He then wrote a caption something to the effect of making fun of Gini in regards to a recent occasion she had to go out and deliver mail which she did not enjoy. I have enclosed the picture of Gini and the poster that Gerald placed it on. The caption has since been removed because other employee's faces have since been used on the poster as jokes.
Also, there has been a nunning joke in the office about Mary going to the boat club to listen to a certain musician play. The joke being that the boat club is not the normal place Mary would socialize because of its clientele and reputation. I have heard Gerald in the past make reference to Mary and the boat club. In addition I have included text messages from Gerald where he makes comments in a joking manner. Which demonstrates that we do lightheartedly joke in the Holtwood Post Office. If Gerald was offended by the comment, why did he wait 10 months to fle a complaint? If Gerald was offended by the comment, why did he not include it in his last EEO filed on April 27, 2018 ?

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


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EEO Investigative Affidavit (Continuation Sheet)
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48. Do you have anything else to add that has not already been discussed?

\section*{RESPONSE:}

The 14 Day Paper Suspension was issued solely based on the fact that Gerald is not reporting to work as scheduled and every effort has been made to accommodate him per the Labor contracts and ELM policy and procedures. When Gerald does not report for Sunday delivery other employees are forced to work which negatively affects their family time or attending their worship services. As a manger I have to hold Gerald accountable for reporting to work as schedule, since he refuses to accept the religious accommodation that has been offered of an adjusted start time on Sundays. The same accommodation that has been offered to other employees who are in the same position as Gerald.

This is the end of my statement and withing else follows.

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


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49. During the past year, has any other enployeo under your supervision aiso been issued disciplinary action iloter of Warning, 7 or 44 Day Suspension or Notice of Removal for Unsatisfactory Attendance)? If so, please provide:
a. Their full name, job titie and pay focation RESPONSE:

No
b. Their superyisor's name

RESPONSE:
NiA
c. Their religion RESPONSE:

NA
d. Plase explain how heishe was disciphined. Please prowne fegible documentation of the disciplinary actions lo sumport your response. RESPONSE:

NiA

I deciare under penalts of perjury that the foregoing is trie and correct.


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EEO Investigative Affidavit (Continuation Sheet)
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50. During the past year, has any other employee under your supervision who had similar unsatisfactory attendance as Complainant that was not issued disciplinary action (Letter of Warming, 7 or 14 Day Suspension or Notice of Removal for Unsatisfactory Attendance? If so, please provide:
a. Their full name. job title and pay location RESPONSE:

No, there has been no other attendance issues that required corrective action or any other employees who refused to work as scheduled.
b. Their supervisor's name RESPONSE:

NA
c. Their religion

RESPONSE:
\(N / A\)
d. Please apian the reason that each employed that you listed was not disciplined. RESPONSE:

NA


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


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\section*{U.S. Postal Service \\ Certification}

\author{
4C-170-0030-18
}

I have read the proceeding attached statement, consisting of 30 pages, and it is true and complete to the best of my knowledge and belief. In making this statement, I understand Section 1001, Titie 18 of the U.S. Code which states:
"Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and wiffully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than \(\$ 10,000\) or impriscned not more than 5 years, or both."

\section*{Privacy Act Notice}

Privacy Act Notice. The collection of this information is authorized by the Equal Enployment Opportuntity Act of 1972, 42 U.S.C. § 2000e-16: the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 633a; the Rehabilitation Act of 1973, as amended, 29 U.S.C. \(\$\) 794a; and Executive Order 11478, as amended. This information will be used to adjudicate complaints of alleged discrimination: and to evaluate me effectiveness of the EEO program. As a routine use, this information may be disclosed to an appropriate govemment agency, comestic or foreign, for law enforcement purposes; where pertinent, in a legal proceeding to which the USPS is a party or has an interest; to a government agency in onder to obtain infornation rolevant to a USPS decision concerning employment, security clearances, contratts, licenses, grants, permits or other benefits; to a govemment agency upon its request when relevant to its decision concerning employment, security clearances. security or suitabitity investigations, contracts. ticerses.
grants or other benefts; to a congressional ofice al your request, to an expert, consultant of other person under contract with the USPS to futfili an agency function: to the Federal Records Center for storage; to the Office of Management and Budget for review of private relief legislation; to an independent certified public accountart during an official audit of USPS finances; to an investlgator, administrative judge or complaints examiner appointed by the Equal Employment Opportunity Commission for investigation of a formal EEO complaint under 29 CFR 1614; to the Mert Systems Protection Board or Office of Special Counsel for proceedines or investigations involving personnel practices and other matters within their furisdiclion: and to a labor erganization as required by the National Labor Relations Act. Under the Privacy Act provisicn, the information requested is voluntary for the complainant, and for Postal Sevice employees and other witnesses.

\section*{USPS Standards of Conduct}

Postal Service regulations require all postal employees to cooperate in any postal investigation. Failure to supply the requested information could result in disciplinary action (ELM 666).

\section*{Oath iffirmation}

Subscribed and (swom) (affirmed) before me on this \(\qquad\) day of \(\qquad\) 20 \(\qquad\) -

Affiont's Sigrature (Sign in the presence of EEO Investigator)
Signature of EEO Complaints Investigator Signature of Affiant

\section*{Dectaration}

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


\title{
Read: EEO Investigation Documents - Gerald Groff
}

\author{
Hess, Brian M
}

Tue 10/23/20186.22 AM

IW Jones Gregory F Allentown, PA-Contractor <Gregory I Jones? ©usps.gove:

\section*{Your message}

To: Hess, Brian M
Subject: FEO Investigation Documents - Gerald Groff
Sent: Monday, October 22. 2018 10:54:26 PM (UTC. O5:OO) Fastern Time (US \& Canada)
was read on Tuesday, October 23. 2018 6:22:01 AM (UTC-05:00) Eastern Time (US \& Canada')

\section*{Holtwood Post Office}

\begin{tabular}{|l|c|c|c|c|c|c|c|c|}
\hline TOTAL A.M. HOURS & -29 & -6 & -18.75 & -26.25 & -26.25 & -26.25 & -26.25 & -158.75 \\
\hline TOTAL SCHEDULED HOURS & -29 & -6 & -3.25 & -12.25 & -10.75 & -12.25 & -10.75 & -84.25 \\
\hline PLAN HOURS & & & & & & & & \\
\hline
\end{tabular}
Holtwood Post Office
\(\begin{aligned} \text { 日EGINMNG DATE: } & \frac{1219117}{11} \\ \text { WEEK: } & \frac{11}{26} \text { WAK PERIOD: } 1\end{aligned}\)

\begin{tabular}{|l|c|c|c|c|c|c|c|c|}
\hline TOTALA.M. HOURS & -12.25 & -6 & -18.76 & -26.25 & -26.25 & -26.25 & -26.25 & -442 \\
\hline TOTAL SCHEDULED HOURS & -10.75 & -6 & -3.25 & -10.75 & -10.75 & -11.25 & -10.75 & -63.5 \\
\hline PLAN HOURS & & & & & & & & \\
\hline
\end{tabular}




Case 5:19-cv-01879-JLS Document 36-2 Filed 02/14/20 Page 138 of 356 CPC-EOR Report

\section*{End-of-Run Carrier Piece Counts for ZIP Code 17532}

From 11/10/2017 at 04:00:00 through 11/13/2017 at 04:00:00 for both letters and flats



March 21, 2019

Mr. Robert J. Barnhart, Director
Compliance and Control Division
Office of Federal Operations
Equal Employment Opportunity Commission
P. O. Box 77960

Washington, DC 20013-8960
RE: Gerald E. Groff v. Megan J. Brennan, Postmaster General
OFO Docket Number: 2019002200
Agency Case Number : 4C-170-0030-18

Dear Mr. Barnhart:
This is in response to your letter requesting the official EEO complaint file in the referenced case. Enclosed, please find the requested file submitted in accordance with 29 C.F.R. 1614.403(e).

The Postal Service reserves the right to submit a brief in support of its position or a responsive brief in opposition to any brief which the complainant may file.

Sincerely,

\section*{Cheryl Hendon}

EEO Services Analyst
P. O. Box 21979

Tampa, FL 33622-1979

\section*{Enclosure}
cc: without enclosure

Complainant
Gerald E. Groff, \(\square\) New Providence PA 17560-9680

Complainant's Representative
Alan J. Reinach, Church State Council, 2686 Townsgate Rd, Westlake Village CA 93361
```

U.S. Postal Service - USPS Eastern
Region
NEEOSIO - Appeals
P.O.B. 21979
Tampa, FL 33622

```
RE: Gerald E Groff
Docket \# : 2019002200
Filed : 03/01/19
Agency Number (s): 4C170003018

Dear Sir／Madam：

This is to acknowledge that the above referenced appeal has been received on the date indicated．The agency must submit the complaint file，along with any related or consolidated complaint files，to the office of Federal Operations WITHIN 30 DAYS OF INITIAL NOTIFICATION THAT THE COMPLAINANT HAS EILED AN APPEAL．See 29 C．F．R．Section 1614．403（e）．

In addition，any related material developed subsequent to the initial submission of the complaint file，i．e．，attorney fees，supplemental invest－ igation，etc．must be forwarded upon notification of any related appeal．The agency must ensure that all materials submitted to the commission have also been provided to the complainant．Enclosed is an＂Agency Checklist＂for your use in identifying records to submit in your agency file．

IF THE COMPLAINT FILE IS NOT SUBMITTED TO THIS OFFICE WITHIN THE TIME FRAME SET FORTH ABOVE，THE COMMISSION MAY TAKE APPROPRIATE ACTION，INCLUDING DRAWING AN INFERENCE ADVERSE TO THE AGENCY IN ALL MATTERS WHERE THE EVIDENCE IS NOT AVAILABLE TO THE COMMISSION．THIS COULD RESULT IN A DECISION UNFAVORABLE TO THE AGENCY．

The agency must submit the complaint file within the time frame specified above regardless of whether or not the complainant has timely provided the agency a copy of any supporting statement or brief，and regardless of whether or not the agency＇s comments or brief relative to the appeal itself are completed．

Any agency statement or brief in opposition to an appeal must be submitted to the Commission and served on the complainant within 30 days of receipt of the statement or brief supporting the appeal．If no statement or brief supporting the appeal is filed，the statement or brief in opposition to the appeal must be filed within 60 days of the receipt of the appeal．See 29 C．F．R．1614．403（f）．The Commission will accept statements or briefs in opposition to an appeal by facsimile transmission（Fax Number 202－663－7022） provided they are no more than ten（10）pages long．

MAR 13 ：00
NEEUISU

The agency should reference the above docket number(s) in all submissions and correspondence to the Commission.

\title{
Bount \& Bunhut
}

Robert J. Barnhart, Director Compliance and Control Division Office of Eederal Operations

Enclosure

CC:

\section*{CERTIFICATE OF SERVICE}

I certify that the Notification of Appeal/Request for Complaint File was sent by regular mail this day to the agency.
```

EQUAL OPPORTUNITY ASSISTANT: Robert Barnhart
Date: Mar 14, 2019

```

\title{
U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION Office of Federal Operations P. O. Box 77960 \\ Washington, D.C. 20013
}

AGENCY CHECKLIST

OFO Docket \#: 2019002200
Agency Number(s):4C170003018
Hearing \#:

The checklist below is provided for your convenience and to assist us in ensuring that the documents you send us are complete and properly associated with the correct case file. We would appreciate it if you would use this checklist when you submit your complaint file. Please check off all items where applicable.

EEO Counselor's Report
Notice of Final Interview
Formal Complaint
Notice of Agency Acknowledgement of Complaint
Partial Dismissal Letter/Supporting Documentation
Investigative Report and File(s) (for all complaints noted above)
Settlement Agreement
Request to reinstate complaint/specific performance for Settlement Breach
Hearing Request/Rights/Evidence of receipt of hearing rights
ALL DOCUMENTS SUBMITTED BY THE PARTIES TO THE AJ:
(Including, but not limited to: All discovery related requests, responses motions, oppositions, exhibits, and all summary judgment related pleadings and documents)
ALL NOTICES, RULINGS, AND ORDERS SUBMITTED BY THE AJ
(Including, but not limited to: Acknowledgement orders, Discovery Rulings Notice of Summary Judgment, Summary Judgment Rulings, Sanction Ruling)

Hearings Transcript(s) **all volumes of multiple transcripts**
Hearing Exhibits **all exhibits offered at the hearing**
AJ's Findings and Conclusions/Proof of date of agency receipt Final Agency Action/Decision
Evidence of receipt/mailing of the Final Action/Decision
Compensatory Damages Documentation/Decision
Attorney's Fees Petition/Decision
Complete Grievance File (If an appeal from a grievance decision is involved)
** Please check with Agency Legal Unit for any missing documents

Case: 21-1900 Document: 24-2 Page: 286 Date Filed: 07/28/2021

Case 5:19-cv-01879-JLS Document 36-2 Filed 02/14/20 Pa EQUAL EMPLOYMENT OPPORTUNITY COMMISSION OFFICE OF FEDERAL OPERATIONS P.O. BOX 77960

WASHINGTON, DC 20013
OFFICIAL BUSINESS

\section*{RECENED \\ MAR 182019 \\ NEEOISO}

 USPS00524

Complainant Information: (Please Print or Type)


Attorney/Representative Information (if any):


\section*{General Information:}
U.S.P.S.
discrimination:
\[
4 c-170-0030-18
\]

\section*{Hottwoad, pA Post office}
```

$X$ Yes; Date Received $2 / 01 / 19$ (Remember to attach a copy) No This appeal alleges a breach of settlement agreement

```

Has a complaint been filed on this same matter with the EEOC, another agency, or through any other administrative or collective bargaining procedures?

Has a civil action (lawsuit) been filed in connection with this complaint?
\(X \quad\) No Yes (Attach a copy of the civil action filed)

NOTICE: Please attach a copy of the final decision or order from which you are appealing. If a hearing was requested, please attach a copy of the agency's final order and a copy of the Commission Administrative Judge's decision. Any comments or brief in support of this appeal MUST be filed with the EEOC and with the agency within 30 days of the date this appeal is filed. The date the appeal is filed is the date on which it is postmarked, hand delivered, or faxed to the Commission at the address above.

Please specify any reasonable accommodations you will require to participate in the appeal process:
\begin{tabular}{|l|c|}
\hline \begin{tabular}{l} 
Signature of complainant or \\
Complainant's representative:
\end{tabular} & Nell \(\sigma\) Qeenad \\
\hline Date: & \(3 / 1 / 2019\) \\
\hline Method of Service on Agency: & regular mail \\
\hline Date of Service: & \(3 / 1 / 2019\) \\
\hline
\end{tabular}

\title{
UNITED STATES POSTAL SERVICE EQUAL EMPLOYMENT OPPORTUNITY CASE IN THE MATTER OF:
}

\section*{Gerald E. Groff Complainant}

Agency Case No. 4C-170-0030-18

Formal Filed: April 27, 2018

Megan J. Brennan, Postmaster General, c/o Eastern Area Respondent.
v.
\(\qquad\)
FINAL AGENCY DECISION

\section*{Introduction}

Pursuant to Equal Employment Opportunity Commission (EEOC) regulations at 29 C.F.R. §1614.110, this is the final agency decision of the U.S. Postal Service regarding the complaint of discrimination identified above.

\section*{Statement of Claim}

The complainant alleged discrimination based on Religion (Evangelical Christian) when:
1. On January 16, 2018, he was issued a 7 -Day Suspension;
2. On or around March 6, 2018, he requested a religious accommodation and did not receive a response;
3. On October 9, 2018, he was issued a 14-Day Suspension dated October 5, 2018.

\section*{Chronology}

This complaint was processed in accordance with the applicable Equal Employment Opportunity Commission (EEOC) regulations, 29 C.F.R. §1614.103 et seq. An investigation was conducted, and a copy of the investigative report was transmitted to the complainant and his representative on November 20, 2018. Following the receipt of that report, the complainant had 30 days within which to request a hearing before an EEOC Administrative Judge (AJ) or a final agency decision without a hearing. As the complainant failed to request either a hearing or a final agency decision without a hearing, this decision is being issued in accordance with 29 C.F.R. §1614.110(b).

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Final Agency Decision
Gerald E. Groff
Agency Case Number 4C-170-0030-18
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\section*{Applicable Law}

\section*{Disparate Treatment}

The United States Supreme Court established a burden-shifting framework for analyzing claims of discrimination in McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973), and subsequently refined that analysis in Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981). The McDonnell Douglas and Burdine approach involves a three-step process when a complainant alleges intentional discrimination based on a disparate treatment theory. The Equal Employment Opportunity Commission has adopted this approach in its decision making. Downing v. U.S. Postal Service, EEOC Appeal No. 01822326 (September 19, 1983); Jennings v. U.S. Postal Service, EEOC Appeal No. 01932793 (April 13, 1994); and Saenz v. Department of the Navy EEOC Request No. 05950927 (January 9, 1998). A complainant alleging discrimination must first demonstrate that there is some substance to his or her claim. To satisfy this burden, the complainant must establish a prima facie case of discrimination for each of the bases of discrimination alleged by a preponderance of the evidence. Furnco Construction Company v. Waters, 438 U.S. 576 (1978).

Although a complainant may establish a prima facie case by presenting direct evidence of discrimination, the more frequent method of establishing a prima facie case is through circumstantial evidence by showing that he or she: (1) belongs to a protected group; (2) was subjected to an adverse employment action; and (3) was treated differently in this regard than similarly situated individuals who were not members of the protected group. Hill v. Department of Veterans Affairs, EEOC Appeal No. 0120063979 (November 28, 2007); Mayberry v. Vought Aircraft Company 55 F.3d 1086, 1090 ( \(5^{\text {th }}\) Cir. 1995); Mitchell \(v\). Toledo Hospital, 964 F.2d 577, 582-83 ( \(6^{\text {th }} \mathrm{Cir}\). 1992). The failure to establish a specific element of a prima facie case may be overcome by presenting evidence of agency actions from which an inference of discrimination could be drawn if they remained unexplained. Day v. U.S. Postal Service, EEOC Appeal No. 01996097 (September 18, 2000).

Once a prima facie case has been established, the burden of production shifts to the employer to articulate a legitimate, non-discriminatory reason for its action. Furnco, 438 U.S. at 578. See also St. Mary's Honor Center v. Hicks, 509 U.S. 502, 506 (1993). The employer need not persuade the trier of fact that the proffered reason was its actual motivation but merely needs to raise a genuine issue of fact as to whether it discriminated against the complainant. Burdine, 450 U.S. at 254 ; Keval v. Commodity Futures Trading Commission EEOC Appeal No. 01832127 (November 2, 1984); Hollis v. Department of Veterans' Affairs, EEOC Appeal No. 01934600 (May 3, 1994). If the agency offers no adequate explanation for the discrepancy in treatment between the complainant and similarly situated employees, the agency does not carry its burden of production and the complainant prevails on the basis of the inference of discrimination created by the prima facie case. Frady v. U.S. Postal Service, EEOC Appeal No. 01A05317 (January 10, 2003); Houston v. Department of Veterans' Affairs, EEOC Appeal No. 01976054 (August

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Agency Case Number 4C-170-0030-18
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27, 1999); and Parker v. U.S. Postal Service, EEOC Request No. 05900110 (April 30, 1990).

If the employer meets this burden, any presumption of discrimination created by the prima facie case disappears; it simply "drops from the case." Hicks, 509 U.S. at 507; U.S. Postal Service Board of Governors v. Aikens, 460 U.S. 711, 715 (1983). See also Hernandez v. Department of Transportation, EEOC Request No. 05900159 (June 28, 1990) and Peterson v. Department of Health and Human Services, EEOC Request No. 05900467 (June 8, 1990). The complainant can then prevail only if he or she proves that the employer's reasons are not only pretext but are pretext for discrimination. Hicks, 509 U.S. at 507 and 516; Nichols v. Grocer, 138 F.3d 563, 566 ( \(5^{\text {th }}\) Cir. 1998); Swanson v. General Services Administration, 110 F.3d 1180, 1185 ( \(5^{\text {th }} \mathrm{Cir}\) 1997). See also Papas v. U.S. Postal Service, EEOC Appeal No. 01923753 (March 17, 1994) and Bradford v. Department of Defense, EEOC Appeal No. 01940712 (September 20, 1994). Thus, the complainant cannot create a factual issue of pretext based merely on personal speculation that there was discriminatory intent. Southard v. Texas Board of Criminal Justice, 114 F.3d 539, 555 ( \(5^{\text {th }}\) Cir. 1997); Lyles v. U.S. Postal Service, EEOC Appeal No. 01A11110 (May 22, 2002); and Nathan V. U.S. Postal Service, EEOC Appeal No. 01995788 (August 29, 2001).

Pretext involves more than a mistake. It means that the reason offered by management is factually baseless, is not the actual motivation for the action, or is insufficient to motivate the action. Tincher v. Wal-Mart Stores, Inc., 118 F.3d 1125, 1130 ( \(7^{\text {th }}\) Cir. 1997) and Morgan v. Hilti, Inc., 108 F.3d 1319, 1323 (10 \({ }^{\text {th }}\) Cir. 1997). The complainant always carries the "ultimate burden of persuading the trier of fact that he has been the victim of intentional discrimination." Burdine, 450 U.S. at 254 and Hicks, 509 U.S. at 511.

The ultimate burden of persuasion remains with the complainant. Board of Trustees of Keene College v. Sweeney, 439 U.S. 24, 25 N. 2 (1978). This burden was reaffirmed and clarified in St. Mary's Honor Center v. Hicks, supra., where the Court held that in order to impose liability upon an employer for discriminatory employment practices, an ultimate finding of unlawful discrimination is required whether or not the employer's explanation for its action was believable. See also Brewer v. U.S. Postal Service, EEOC Appeal No. 01941786 (June 21, 1994) and Montoya v. Department of Housing and Urban Development, EEOC Appeal No. 01940999 (August 4, 1994).

\section*{Religious Discrimination}

In order to establish a prima facie case of disparate treatment based on religion, a complainant must establish that: (1) he or she is a member of a protected group; (2) he or she was subjected to an adverse employment action; and (3) similarly situated employees outside the complainant's protected group were treated more favorably in like circumstances. Wooten v. U. S. Postal Service, EEOC Appeal No. 01980848 (February 11, 2000); Potter V. Goodwill Industries of Cleveland, 518 F.2d 864 ( \(6^{\text {th }}\) Cir. 1975); and Furnco Construction Company v. Waters, 438 U.S. 576 (1978). A claim of religious

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Final Agency Decision
Gerald E. Groff
Agency Case Number 4C-170-0030-18
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discrimination due to disparate treatment follows the same allocation of the burden and order of proof as in any Title VII disparate treatment claim.

In order to establish a prima facie case of discrimination based on a failure to accommodate religious practices or beliefs, a complainant must demonstrate by a preponderance of the evidence that he or she: (1) has a bona fide religious belief that conflicts with an employment requirement; (2) informed the employer of this belief and conflict; and (3) that the agency enforced the employment requirement and the complainant suffered an adverse employment action for failing to comply with the conflicting employment requirement. Green v. U. S. Postal Service, EEOC Appeal No. 01982669 (October 5, 1999) and Bishop v. Department of the Air Force, EEOC Petition No. 03970085 (September 16, 1997). See also 29 C.F.R. §1605.1 et seq.

Equal Employment Opportunity Commission guidelines broadly define religious practices to include moral and ethical beliefs as to what is right or wrong which are sincerely held by the individual with the strength of traditional religious views. See also United States v. Seeger, 380 U.S. 164 (1965) and Welsh v. United States, 398 U.S. 333 (1970). Title VII requires an employer to provide an accommodation unless it can show that providing the accommodation would create an undue hardship. The Supreme Court has defined undue hardship in this context as any hardship which is "...more than a de minimis cost." Trans World Airlines v. Hardison, 432 U.S. 63 (1977). The Court also held that an employer was not required to violate the seniority provisions of a collective bargaining agreement in order to achieve an accommodation of an employee's religious beliefs.

\section*{Similarly Situated Employees}

One of the key elements of a prima facie case of disparate treatment based on an adverse employment action is proof that similarly situated comparison employees not in the complainant's protected group were treated more favorably. This is so, in part, because agencies are not monolithic entities. Turner v. Department of the Navy, EEOC Request No. 05900445 (September 25, 1990). In general, in the absence of direct evidence of discrimination, if the complainant cannot identify any similarly situated comparison employees who were treated more favorably, he or she will not prevail. Aguilar v. U.S. Postal Service, EEOC Appeal No. 01944167 (August 8, 1995).

In order for two or more employees to be considered similarly situated for the purpose of creating an inference of disparate treatment, a complainant must show that all of the relevant aspects of his or her employment situation are virtually identical to those of the other employees who he or she alleges were treated more favorably. Smith v. Monsanto Chemical Company, 770 F.2d 719, 723 ( \(8^{\text {th }}\) Cir. 1985); Murray v. Thistledown Racing Club, Inc., 770 F.2d 63, 68 ( \(6^{\text {th }}\) Cir. 1985); Nix v. WLCY Radio/Rahall Communications, 738 F.2d 1181, 1185 (11th Cir. 1984); Mazzella v. RCA Global Communications, Inc., 642 F.Supp. 1531, 1547 (S.D. N.Y. 1986), aff'd. 814 F.2d 653 (2 \({ }^{\text {nd }}\) Cir. 1987). The Equal Employment Opportunity Commission has on numerous occasions ruled in similar fashion. See, for example, Tolar v. U.S. Postal Service, EEOC Appeal No. 01965083

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Gerald E. Groff
Agency Case Number 4C-170-0030-18
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(December 16, 1998), citing O'Neal v. U.S. Postal Service, EEOC Request No. 05910490 (July 23, 1991); and Knapp-Huffman v. Department of Justice (Bureau of Prisons), EEOC Appeal No. 01991026 (January 16, 2002).

If employees have different supervisors, perform different job functions, were subject to different job standards, engaged in different conduct, or worked during different time periods, they are not similarly situated. O'Neal, id; Allen v. Department of the Navy, EEOC Request No. 05900539 (June 15, 1990); Willis v. Department of the Treasury, EEOC Appeal No. 01A51459 (March 16, 2003); and Stewart v. Department of Defense, EEOC Appeal No. 01A02890 (June 27, 2001).

For employees to be considered similarly situated, their medical and physical restrictions must be the same as the complainant's. Curtin v. U.S. Postal Service, EEOC Appeal No. 01891910 (March 27, 1990); Briand v. U.S. Postal Service, EEOC Appeal No. 01932677 (February 2, 1994); Woody v. TVA, EEOC Appeal No. 0120063987 (December 17, 2007).

\section*{Background}

At all times relevant to the issue in this complaint, the complainant was employed as a Rural Carrier Associate (RCA) at the Holtwood PA Post Office. (IF, Exhibit 1). The complainant has alleged that Postmaster Brian Hess, Manager, Post Office Operations Keith Krempa; Acting Manager, Post Office Operations Christopher Kruppo and Manager, Labor Relations Lyle Gaines have intentionally discriminated against him on the basis of his Religion (Evangelical Christian) when:
1. On January 16, 2018, he was issued a 7 -Day Suspension;
2. On or around March 6, 2018, he requested a religious accommodation and did not receive a response;
3. On October 9, 2018, he was issued a 14-Day Suspension dated October 5, 2018.

\section*{Claim 1: On January 16, 2018, he was issued a 7 -Day Suspension}

The complainant testified that he signed a 7-Day Suspension paperwork dated January 2, 2018 on January 16, 2018. He averred that it was issued by Postmaster Hess, that Manager Krempa concurred and that it was for Improper Conduct. He declared that Postmaster Hess told him before and during the Pre-Disciplinary Interview (PDI) that the Suspension was issued because the complainant refused to work on two Sundays as scheduled (December 3 and 17, 2018). He averred that he had not worked any Sunday since they started in March 2017 and that his request for religious accommodation was in progress. He averred that there were only three Rural Carriers in the office, Sheila Moyer, Justin Tekely and himself. He declared that Sheila Moore was out on disability on the above referenced dates. He averred that the Suspension paperwork listed a number of reasons from the Employee and Labor Relations 'Manual (ELM) regarding discharge of duties, obedience to orders, and behavior and personal habits. He stated

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Final Agency Decision
Gerald E. Groff
Agency Case Number 4C-170-0030-18
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that Postmaster had verbally explained to him that this generally meant he was punished for refusal to obey orders by reporting for duty and for the disruption he was causing in the Holtwood Post Office by not doing his share of the Sunday workload while Justin had to work. He testified that he believed Justin Tekely complained about working those Sundays so much that Postmaster became "incensed" and suspended him despite knowing he was only seeking accommodation for his faith. He stated that he did not file a grievance on this discipline. (IF, Affidavit A, pp. 3-7, 15).

The record included a 7 Day Suspension dated January 2, 2018, charging the complainant with improper conduct when he failed to report to work as scheduled on December 3, and 17, 2017. The Suspension also cited a previously issued Letter of Warning for attendance. (IF, Affidavit A, p. 27-28).

Also included in the record was a copy of the Letter of Warning dated June 9, 2017 charging the complainant with failure to be regular in attendance when he failed to report for work on April 16, 2017 April 23, 2017 and May 7, 2017. (IF, Exhibit 4).

Claim 2: On or around March 6, 2018, he requested a religious accommodation and did not receive a response

The complainant testified that his initial request for religious accommodation was dated January 4,2018 . He averred that when that request was unsuccessful, he submitted a new request for accommodation on March 6, 2018 which has also been unsuccessful so far. He stated that in both cases his request was submitted to Postmaster Hess who passed them on to the appropriate Postal Departments. He declared that in the first request he asked to be exempted from Sunday Amazon delivery altogether in an effort to keep the Lord's day in its entirety-not to be scheduled at all on Sundays. He averred that in the second request he asked for a lateral transfer within the Postal Service to a position that did not require work on Sundays at all. He stated that in response to his initial request to be exempt from work on Sundays, he was told he could come in after church services were completed in the morning and do his work. He testified that he did not consider this a reasonable accommodation because it would not allow him to keep the Lord's day in its entirety and declined that offer. He averred that there has been no response to his second request for a lateral transfer within the Postal Service. (Id., pp. 7-11).

The record included a letter dated January 4, 2018 from the complainant requesting the reasonable accommodation of being relieved of Amazon Sunday delivery. In this letter the complainant explained his religious belief than Sunday was the Lord's Day and he is not to report for work on that day. (IF, Affidavit A, pp. 31-32).

Included in the record was a letter dated March 6, 2018 from the complainant requesting a lateral transfer to a rural carrier associate position that does not require Sunday work. (IF, Affidavit A, p. 33).

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Final Agency Decision
Gerald E. Groff
Agency Case Number 4C-170-0030-18
Page 7
Claim 3: On October 9, 2018, he was issued a 14-Day Suspension dated October 5 \(\underline{2018}\)

The complainant testified that he signed a 14-Day Suspension paperwork dated October 5, 2018 on October 12, 2018. He averred that it was issued by Postmaster Hess, that Manager Kruppo concurred and that it was for Unsatisfactory Attendance. He declared that Postmaster Hess explained in a letter and verbally during the PDI that the Suspension was issued because the complainant refused to work on June 17, 2018, August 12, 2018 and August 26, 2018 as scheduled. He averred that he had not worked any Sunday since they started in March 2017 because of his belief that Sundays should be devoted entirely to worship and rest. The complainant stated that the suspension paperwork stated that he was charged with violation of the USPS standards of conduct for failure to be regular attendance. He was also charged with violation of maintaining a regular schedule and/or providing evidence for absences when required. He stated that he did not file a grievance on this discipline. (IF, Affidavit A, pp. 17-22).

The record included a 14 Day Suspension dated October 5, 2018, issued to the complainant charging him with unsatisfactory attendance when he failed to report for work on June 17, 2018, August 12, 2018 and August 26, 2018. This suspension cited the previously issued Letter of Warning and 7 Day Suspension as prior elements of discipline. (IF, Affidavit A, pp. 28-30).

\section*{Prima Facie Analysis}

In order to establish a prima facie case of disparate treatment based on religion, a complainant must establish that: (1) he or she is a member of a protected group; (2) he or she was subjected to an adverse employment action; and (3) similarly situated employees outside the complainant's protected group were treated more favorably in like circumstances. Wooten v. U. S. Postal Service, EEOC Appeal No. 01980848 (February 11, 2000); Potter v. Goodwill Industries of Cleveland, 518 F.2d 864 (6 \({ }^{\text {th }}\) Cir. 1975); and Furnco Construction Company v. Waters, 438 U.S. 576 (1978). A claim of religious discrimination due to disparate treatment follows the same allocation of the burden and order of proof as in any Title VII disparate treatment claim.

The complainant established the first element of a prima facie case by way of his testimony that his religion is Evangelical Christian. (IF, Affidavit A, p. 2). The discipline that the complainant received which forms the basis of Claims 1 and 3 sufficiently impacted the terms, privileges and conditions of the complainant's employment to constitute adverse actions. As the analysis below reveals, the third element of a prima facie case has not been fulfilled because the complainant has not established that he was similarly situated to his comparators.

The complainant alleged that Justin Tekely, a Christian, and Sheila Moyer, a nonChristian, were treated more favorably in that on October 10, 2017, the day after Columbus Day holiday, Postmaster Hess filled his vehicle multiple times with parcels to

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assist them and to make their day easier. (IF, Affidavit A, p. 6). Postmaster Hess testified that he believed that the complainant was confused about the dates and that he was referring to November 13, 2017, the day after Veterans Day. He averred that Justin Tekely, a Christian, was a newer RCA with about eight months part-time experience. (IF, Exhibit 12). The complainant's enter on duty date was July 14, 2012. (IF, Exhibit 1). He stated that he assisted Mr. Tekely on November 13, 2017 because Mr. Tekely was less experienced and had more mail volume than the complainant on that day citing Mr. Tekely's Delivery Point Sequence Mail of 3,421 pieces and 227 Parcels as opposed to the complainant's Delivery Point Sequence Mail of 2,350 pieces and 142 parcels. He noted that the complainant ended his tour of duty at 1651 hours and Mr. Tekely ended his at 1910 hours. Similarly, Sheila Moyer, a non-Christian, with four months part-time experience had Delivery Point Sequence Mail of 3,164 pieces and 181 Parcels on that day. (IF, Exhibit 13). She ended up her tour of duty at 1855 hours. Postmaster Hess further explained that as a manager he assisted the routes that had the most mail volume and the least experienced carriers who would be in jeopardy of not making the last dispatch truck. He stated that knowing the complainant's experience and mail volume he had on November 13, 2017 he knew that the complainant would not need additional assistance to meet the final dispatch truck that left the Holtwood Post Office at 1730 hours. (IF, Affidavit B, pp. 5-7). Thus, neither Mr. Tekely nor Ms. Moyer were similarly situated to the complainant because they had less experience and greater mail volume on the day that Postmaster Hess assisted them and did not assist the complainant in the same manner.

The record included an End of Run Carrier Piece Count report for 17532 from November 10-13, 2017 which confirmed Delivery Point Sequence Mail pieces of 3,420 for Mr. Tekely, 2350 pieces for the complainant and 3,164 pieces for Ms. Moyer.

Moreover, the complainant has not identified any individuals who were not Christian and failed to report for work on Sundays that were not disciplined for failure to report as scheduled. Accordingly, the third element of the prima facie case of disparate treatment discrimination has not been fulfilled.

In order to establish a prima facie case of discrimination based on a failure to accommodate religious practices or beliefs, a complainant must demonstrate by a preponderance of the evidence that he or she: (1) has a bona fide belief that conflicts with an employment requirement; (2) informed the employer of this belief and conflict; and (3) that the agency enforced the employment requirement and the complainant suffered an adverse employment action for failing to comply with the conflicting employment requirement. Green v. U. S. Postal Service, EEOC Appeal No. 01982669 (October 5, 1999) and Bishop v. Department of the Air Force, EEOC Petition No. 03970085 (September 16, 1997). See also 29 C.F.R. §1605.1 et seq.

As noted above, the complainant had a bona fide religious belief the conflicts with an employment requirement, i.e., that he should not work at all on Sundays because it is the Lord's day which should be devoted to worship and rest. He informed the employer of

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his belief and conflict. Finally, he suffered employment adverse actions in the form of 7Day and 14-Day Suspensions. Accordingly, the complainant has fulfilled the requirements of a prima facie case of discrimination based on a failure to accommodate religious practices or beliefs

Although the determination had been made that the complainant satisfied the essential requirements of a prima facie claim of religion relative to this claim, it is important to point out that such a finding is not the equivalent of a finding of discrimination. It is simply be proof that, without more, the circumstances involving management actions have given rise to an inference that discrimination did occur. Thus, the burden now shifts to management to produce admissible evidence that its actions were taken for legitimate, non-discriminatory reasons. The agency has satisfied that burden, via record evidence further outlined below.

\section*{Management's Non-Discriminatory Reason}

Assuming, but only for the sake of argument, that the complainant has established a prima facie case of discrimination based on religion, management has articulated a legitimate, non-discriminatory explanation for their actions.

\section*{Claim 1: On January 16, 2018, he was issued a 7 -Day Suspension}

Postmaster Hess testified that the complainant was given a 7-day suspension for refusing to report to work to deliver Sunday Amazon at the Holtwood Post Office on December 3, 2017 and December 17, 2017. He averred that the complainant was previously issued a Letter of Warning on June 9, 2017 for failing to report to work as scheduled to deliver Sunday Amazon at the Lancaster Carrier Annex. He stated that the complainant was scheduled for Amazon Sunday delivery on December 3 and December 17, 2017, but he refused to work due to his religious beliefs. He declared that the complainant had been informed on several occasions in the past that his start time on Sundays could be adjusted for him to attend his church service. He averred that the complainant had declined that accommodation and stated the only accommodation that he would accept was having the whole day of Sunday off as a day of rest. At the time of the discipline was issued, the Holtwood Post Office had three RCA's, Gerald E. Groff, Justin M. Tekely and Sheila Moyer. All three rural carrier associates (Gerald, Justin and Sheila) had signed the Sunday/Holiday Amazon Volunteer List requesting NOT to work Sundays. In order to follow the National Rural Letter Carriers' Association union contract (since there were no Sunday/Holiday volunteers at the Holtwood Post Office), he scheduled the RCA's starting with the junior RCA and made a rotation for the Sundays that Amazon would be delivered. Sheila Moyer was injured on duty on December 1,2017 and out on extended leave, which only left Gerald E. Groff and Justin Tekely to rotate the Sundays that delivery would be needed. Postmaster Hess noted that Justin Tekely attended church and his start time was adjusted so that he could attend his church services on the Sundays that he was scheduled. (IF, Affidavit A, pp. 27-30; Affidavit B, p. 3).

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The record contained copies of the Holtwood Schedules from December 2, 2017 through January 5,2018 . These schedules confirmed that the complainant was only scheduled for Sunday work on December 3 and 17, 2017, and noted he refused to work based on his religious beliefs. (IF, Exhibit 8).

The Holtwood Sunday/Holiday Amazon Volunteer List dated October 2, 2017 confirming there were three RCAs, the complainant, Tekely and Moyer, all who declined to volunteer for this work. (IF, Exhibit 9).

Postmaster Hess testified that the complainant acknowledged that he knew it was his duty to report to work as scheduled and acknowledged that he understood that Sunday work may be required as stated in the National Rural Letter Carriers' Association's Contract Article 30.2.P titled Sunday Work. The complainant stated that if he worked on December 3 and December 17 that he would be working seven days straight. He was not scheduled all seven days at the Holtwood Post Office. He opted to work at the Quarryville Post Office on the days that he was not scheduled to work at the Holtwood Post Office for his own benefit. Postmaster Hess testified that he explained to the complainant there was not a written rule in the National Rural Letter Carriers' Association's contract that forbade RCA's from working more than seven days straight. National Rural Letter Carrier Union Steward Barbara Callahan also confirmed and further explained to the complainant that there was no contract clause that excluded RCA's from working more than seven days in a row. (IF, Affidavit B, p. 3).

Postmaster Hess testified that the complainant's religion was not a factor when he was given the 7-Day Suspension. He averred that it was issued because of the complainant's failure to report to work as scheduled. He declared that he was abiding by the National Rural Letter Carriers' Contract, Article 30, Section 2, P. He explained that the Holtwood Post Office did not have any RCA volunteers for the Sunday/Holiday Work list, so a schedule was created starting with the junior RCA, Sheila Moyer, covering the first Sunday. (IF, Affidavit B, p. 4).

Included in the record was National Rural Letter Carriers' Contract, Article 30, Section 2, \(P\). which provided:

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 work prior to selecting qualified employees from the list. The Employer will make every reasonable effort to avoid requiring substitutes, RCAs, and RCRs not on the list to work. (IF, Exhibit 17, pp. 5-6).

Manager Krempa testified that he concurred in the issuance of the 7-Day Suspension because the complainant failed to report as scheduled for Amazon work on Sundays. He averred that the complainant's religion was not a factor in his concurrence. (IF, Affidavit C, p.3).

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Claim 2: On or around March 6, 2018, he requested a religious accommodation and did not receive a response

Postmaster Hess testified that on January 4, 2018 the complainant presented a written request to have the entire day of Sunday off as a day of rest, not just part of it. On March 6, 2018, he presented a written request for a lateral transfer within the United States Postal Service to a position that did not require working on Sundays. Postmaster Hess averred that the complainant was sent via US Mail a response to his request on July 17, 2018. He stated that he personally also hand delivered a response to the complainant's religious accommodation request as well to ensure the complainant received it on July 18,2018 . The request to have all of Sunday off was not granted. The complainant was offered the accommodation of having a modified schedule on Sunday which he refused to accept. Postmaster Hess averred that he also informed the complainant on approximately June 8, 2018 that attempts would be made to find volunteers to cover the Sundays that he was scheduled to work. (IF, Affidavit B, p. 8).

Postmaster Hess testified in response to the complainant's March 6, 2018 religious accommodation request a teleconference was held with the complainant, Lyle Gaines (Manager Labor Relations Central PA District) and himself on Monday March 26, 2018. Lyle Gaines led the teleconference and asked the complainant questions in regard to his religious accommodation request. (ld.)

Postmaster Hess stated that no documentation had been received from the clergy of the church that the complainant attended in reference to any restrictions on working Sundays. In early January 2018 the complainant was asked to provide a written statement from his clergy about his church attendance, responsibilities at the church and Sunday requirements that his Church had. He balked at asking his church for such a statement since he was not a member of the congregation. Instead, he submitted his own statement. (ld., p. 9.)

Included in the record was a letter from the complainant dated January 4, 2018 advising that he regularly attends the Greenville campus of the Victory Church in Lancaster, PA. (IF, Exhibit 3).

With regard to the complainant's request for a lateral transfer within the United States Postal Service to a position that did not require working on Sundays, Postmaster Hess explained that complainant as an RCA occupied a non-career position and that all United States Postal Service non-career positions were required to work on Sundays as written in their collective bargaining agreements. He averred that he did not know of any noncareer positions to which the complainant could be transferred that would not require working on Sundays. Postmaster Hess stated this accommodation was discussed on the teleconference with Lyle Gaines Manager Labor Relations Central PA District on March 26, 2018. (ld.)

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Postmaster Hess testified that since June 7,2018 when the complainant was scheduled to work a Sunday at the Lancaster Carrier Annex Sunday Amazon Hub, he had solicited all the unscheduled RCA's of the Lancaster Carrier Annex Sunday Amazon Hub to see if they would work for the complainant. He explained that since the implementation of the Lancaster Carrier Annex Sunday Hub the Holtwood Post Office RCA's report there on Sundays and holidays. He averred a list was maintained of RCA's who volunteered to work and Sundays and holidays. He stated the volunteer assistant rural carriers and RCA's were always scheduled first. The other RCA's who did not wish to work were then scheduled on a rotating basis alphabetically by last name since there were not enough volunteers. Since the volunteers were automatically scheduled to work there was no RCA's associates that the complainant could switch with. He declared that he found RCA's to work for the complainant on Sunday July 1, 2018 and July 15, 2018. (Id.)

Postmaster Hess explained that he could not mandate RCA's from other offices to work Sundays for the complainant because, excluding the Amazon Sunday/Holiday Hubs which they were assigned to by geographic area, they were responsible to their home offices. He declared that RCA's could not be forced/mandated to work in another office. During the holiday peak delivery season all the post offices received Sunday Amazon directly at their office. He maintained that there was a shortage of RCA's in many post offices which compounded the Issue of finding rural delivery assistance. He stated that based on not being able to "mandate" other rural carrier associates to cover the Holtwood Post Office, the other offices trying to cover their Sunday delivery operation and a shortage of available RCA's the idea of bringing in another RCA from another office was not plausible. (Id., p. 10).

Postmaster Hess testified that he informed the complainant that attempts would be made to find volunteers to cover his scheduled Sundays. If no volunteers were available, he was offered the religious accommodation of a modified Sunday schedule, the same accommodation offered to other employees in the same situation. Postmaster Hess averred that on July 20, 2018 he asked the complainant if the resolution and religious accommodation offered was acceptable. The complainant stated that it was not and that it had been offered to him before and that was not what he was asking for. (Id., pp. 1011).

Labor Relations Manager Gaines testified that the complainant requested through his Postmaster not to work on Sundays. He averred that he responded through email to the Postmaster and eventually followed with a written response to the complainant. In a letter dated July 17, 2018, Manager Gaines stated:

Since our meeting it was communicated to your Postmaster that we must make attempts to find volunteers in order to provide you the accommodation that you seek. I considered all information provided by you and in accordance with the above. Other than attempting to find volunteers, the only other alternative is to allow you to have a modified schedule the same as other employees equally situated to you.

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Manager Gaines testified that he considered alternate positions, but no steps were taken to transfer the complainant because as a non-career employee he would be required to work Sundays even if he was transferred to another position. (IF, Affidavit D, pp.3-5).

In summary, as noted above, management applied the collective bargaining agreement in scheduling the complainant for Sunday work. Excusing the complainant from Sunday work would have violated the rights created by the collective bargaining agreement for the complainant's coworkers. Management offered the complainant an accommodation which would have permitted him to worship on Sundays. Moreover, it sought and obtained volunteers to work on Sunday in his place. A lateral transfer was not a plausible accommodation since the complainant as a noncareer employee would still have to work Sundays in another location.

Claim 3: On October 9, 2018, he was issued a 14-Day Suspension dated October 5. \(\underline{2018}\)

Postmaster Hess testified that he issued the complainant a 14-Day Suspension on October 12, 2018 because of his refusal to report as scheduled for work on June 17, 2018, August 12, 2018 and August 26, 2018. He averred that there were no volunteers available on those days. He stated that he relied on the following provisions of the ELM: Section 511.43 (Employees are expected to maintain their assigned schedule.); Section 665.15 (Employees must obey the instructions of their supervisor.); and Section 665.41 (Employees are required to be regular in attendance, failure to be regular attendance may result in disciplinary action.). He also relied on the National Rural Letter Carriers' Association Labor Contract and the Memorandum of Understanding between the USPS and the NRLCA providing that the parties agreed that rural carrier leave replacements would be assigned as appropriate to complete Sunday/holiday parcel deliveries. He stated that the complainant's religion was not a factor when he was issued the 14-Day Suspension and that to his knowledge the complainant did not file a grievance on it. (IF, Affidavit A, pp. 29-30; Affidavit B, pp. 14-16; Exhibit 18, p. 2-6).

Record evidence in the form of emails Postmaster Hess sent to other Post Offices revealed he was unsuccessful in his attempts to obtain volunteers to work for the complainant on August 12, 2018 and August 26, 2018. (IF, Exhibit 10).

Manager Kruppo testified that he concurred in issuing the complainant the 14-Day Suspension because of his failure to report to work on Sunday as scheduled. He noted a Letter of Warning and 7-Day Suspension had previously been issued to the complainant. He averred that the complainant's religion was not a factor in his concurrence. (IF, Affidavit E, pp. 3, 6).

Based on the evidence in the record, management has established their nondiscriminatory reasons for their actions. This analysis will now address whether there is evidence of pretext.

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\section*{Pretext}

At this point, the complainant has the burden of proving that management's stated reason is not only pretext, but is pretext for intentional discrimination. Tincher v. Wal-Mart Stores, Inc., 118 F.3d 1125, 1129 ( \(7^{\text {th }}\) Cir. 1997).

The complainant averred that management disrespected his religious beliefs because they refused to grant his requested accommodation of not being acquired to work on Sundays at all. He averred that as a result he was punished for following his conscience by being issued the Suspensions described above. The complainant, however, has not established that management's reasons for not granting the accommodation he requested and for issuing the discipline were not the real reasons or that they were a pretext for discrimination on the basis of his Christian religion.

The complainant's allegations are not supported by the totality of the record and he has failed to present any plausible evidence that would demonstrate that management's reasons for its actions were factually baseless or not its actual motivation. Tincher v. WalMart Stores, Inc. and Morgan v. Hilit, Inc., Id. A complainant's subjective beliefs cannot be probative evidence of pretext and, therefore, cannot be the basis of judicial relief. Elliot v. Group Medical \& Surgical Service, 714 F.2d 556, 557 (5th Cir. 1983), cert. denied, 467 U.S. 1215, (1984); see also, Billet v. CIGNA Corp., 940 F.2d 812, 816 ( \(3^{\text {rd }} \mathrm{Cir}\) 1991). The complainant cannot second-guess the wisdom of the agency's business decisions. Thus, agencies are free to discharge, promote, demote, or transfer individuals for any reason, fair or unfair, so long as the decision is not a pretext for discrimination. Damon v. Fleming Supermarkets of Florida. Inc., 196 F.3d 1354, 1361 (11th Cir. 1999); Nix V. WLCY Radio/Rahall Communications, 738 F.2d 1181, 1187 (11 th Cir 1984).

In other words, there was nothing that showed by a preponderance of the evidence that the legitimate explanations given by the agency were pretext for discrimination. Hammons v. HUD, EEOC Request No. 05971093 (March 5, 1999). Hence, the complainant has not shown that the agency's explanation for its action is a pretext for discrimination.

\section*{Conclusion}

After carefully considering the entire record, and applying the legal standards outlined in McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973), the evidence does not support a finding that the complainant was subjected to discrimination as alleged. Consequently, this complaint is now closed with a finding of no discrimination.

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\section*{Appeal Rights}

\section*{APPEAL TO EEOC}

The complainant has the right to appeal the Postal Service's final decision to the:

\section*{Director, Office of Federal Operations Equal Employment Opportunity Commission (EEOC) \\ P.O. Box 77960 \\ Washington, DC 20013-8960}
within 30 calendar days of receipt of this decision. The complainant must use EEOC Appeal Form 573, a copy of which is enclosed, in connection with the appeal. The complainant may also deliver the appeal in person or by facsimile provided that briefs filed by facsimile are ten or fewer pages in length. Any supporting statement or brief must be submitted to the EEOC within 30 calendar days of filing the appeal. Along with the appeal, the complainant must submit proof to the EEOC that a copy of the appeal and any supporting documentation and/or brief were also submitted to the:

\title{
NEEOISO - FAD \\ National EEO Investigative Services Office USPS
}
P. O. Box 21979

Tampa, FL 33622-1979
The complainant is advised that if the complainant files an appeal beyond the 30-day period set forth in the Commission's regulations, the complainant should provide an explanation as to why the appeal should be accepted despite its untimeliness. If the complainant cannot explain why the untimeliness should be excused in accordance with EEOC Regulation 29 C.F.R. §1614.604, the Commission may dismiss the appeal as untimely.

\section*{RIGHT TO FILE A CIVIL ACTION}

Alternatively, if the complainant is dissatisfied with the Postal Service's decision in this case, the complainant may file a civil action in an appropriate U.S. District Court within 90 calendar days of receipt of the Postal Service's final decision, within 90 calendar days of the EEOC's final decision on any appeal, or after 180 days from the date of filing an appeal with the EEOC if no final decision has been rendered. If the complainant chooses to file a civil action, that action should be styled Gerald E. Groff v. Megan J. Brennan, Postmaster General. The complainant may also request the court to appoint an attorney for the complainant and to authorize the commencement of that action without the payment of fees, costs, or security. Whether these requests are granted or denied is

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within the sole discretion of the District Judge. The application must be filed within the same 90 -day time period for filing the civil action.

\author{
Chengl Htendan \\ Cheryl Hendon \\ EEO Services Analyst Date: January 25, 2019 \\ NEEOISO \\ P. O. Box 21979 \\ Tampa, FL 33622-1979 \\ Enclosure: EEOC Appeal Form 573
}
cc:
Complainant
Gerald E. Groff
New Providence, PA 17560-9680
USPS Tracking No. 9114901496451657776493
Representative
David Crossett, Esq.
8500 Allentown Pike, Ste 3
Blandon, PA19510-9460
USPS Tracking No. 9114901496451657776509
 TO THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION OFFICE OF FEDERAL OPERATIONS
P.O. Box 77960

Washington, DC 20013

Complainant Information: (Please Print or Type)
\begin{tabular}{l|l|}
\hline Complainant's name (Last, First, M.I.): \\
\begin{tabular}{|l|l|}
\hline Home/mailing address: \\
\hline City, State, ZIP Code: & \\
\hline Daytime Telephone \# (with area code): & \\
\hline E-mail address (if any): & \\
\hline Attorney/Representative Information (if any): \\
\hline Attorney name: \\
\hline Non-Attorney Representative name: & \\
\hline Address: \\
\hline City, State, ZIP Code: \\
\hline Telephone number (if applicable): & \\
\hline E-mail address (if any): & \\
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\section*{General Information:}

\section*{Name of the agency being charged with} |discrimination:
\begin{tabular}{|c|c|}
\hline Identify the Agency's complaint number: & \\
\hline Location of the duty station or local facility in which the complaint arose: & \\
\hline Has a final action been taken by the agency, an Arbitrator, FLRA, or MSPB on this complaint? & \(\qquad\) Yes; Date Received \(\qquad\) (Remember to attach a copy)
\(\square\) No
\(\qquad\) This appeal alleges a breach of settlement agreement \\
\hline Has a complaint been filed on this same matter with the EEOC, another agency, or through any other administrative or collective bargaining procedures? & \(\qquad\) No
\(\qquad\) Yes (Indicate the agency or procedure, complaint/docket number, and attach a copy, if appropriate) \\
\hline Has a civil action (lawsuit) been filed in connection with this complaint? & \begin{tabular}{l}
No \\
Yes (Attach a copy of the civil action filed)
\end{tabular} \\
\hline
\end{tabular}

NOTICE: Please attach a copy of the final decision or order from which you are appealing. If a hearing was requested, please attach a copy of the agency's final order and a copy of the Commission Administrative Judge's decision. Any comments or brief in support of this appeal MUST be filed with the EEOC and with the agency within \(\mathbf{3 0}\) days of the date this appeal is filed. The date the appeal is filed is the date on which it is postmarked, hand delivered, or faxed to the Commission at the address above.

Please specify any reasonable accommodations you will require to participate in the appeal process:
\begin{tabular}{|l|l|}
\hline \begin{tabular}{l} 
Signature of complainant or \\
complainant's representative:
\end{tabular} & \\
\hline Date: \\
\hline Method of Service on Agency: & \\
\hline Date of Service: & \\
\hline
\end{tabular}

\section*{PRIVACY ACT STATEMENT}
(This form is covered by the Privacy Act of 1974. Public Law 93-597. Authority for requesting the personal data and the use thereof are given below.)
1. FORM NUMBER/TITLE/DATE: EEOC Form 573, Notice of Appeal/Petition, February 2009
2. AUTHORITY: 42 U.S.C. § \(2000 \mathrm{e}-16\)
3. PRINCIPAL PURPOSE: The purpose of this questionnaire is to solicit information to enable the Commission to properly and effectively adjudicate appeals filed by federal employees, former federal employees, and applicants for federal employment.
4. ROUTINE USES: Information provided on this form may be disclosed to: (a) appropriate federal, state or local agencies when relevant to civil, criminal, or regulatory investigations or proceedings; (b) a Congressional office in response to an inquiry from that office at your request; and (c) a bar association or disciplinary board investigating complaints against attorneys representing parties before the Commission. Decisions of the Commission are final administrative decisions, and, as such, are available to the public under the provisions of the Freedom of Information Act. Some information may also be used in depersonalized form as a data base for statistical purposes.
5. WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION: Since your appeal is a voluntary action, you are not required to provide any personal information in connection with it. However, failure to supply the Commission with the requested information could hinder timely processing of your case, or even result in the rejection or dismissal of your appeal.

> You may send your appeal to:
> The Equal Employment Opportunity Commission
> Office of Federal Operations
> P.O. Box 77960
> Washington, D.C. 20013

Fax it to (202) 663-7022 or submit it through the Commission's electronic submission portal.


\title{
UNITED STATES POSTAL SERVICE EQUAL EMPLOYMENT OPPORTUNITY CASE IN THE MATTER OF:
}

Gerald E. Groff
Complainant
v.

Megan J. Brennan,
Postmaster General, c/o Eastern Area Respondent.

Agency Case No. 4C-170-0030-18

Formal Filed: April 27, 2018

\section*{FINAL AGENCY DECISION}

\section*{Introduction}

Pursuant to Equal Employment Opportunity Commission (EEOC) regulations at 29 C.F.R. §1614.110, this is the final agency decision of the U.S. Postal Service regarding the complaint of discrimination identified above.

\section*{Statement of Claim}

The complainant alleged discrimination based on Religion (Evangelical Christian) when:
1. On January 16, 2018, he was issued a 7 -Day Suspension;
2. On or around March 6, 2018, he requested a religious accommodation and did not receive a response;
3. On October 9, 2018, he was issued a 14-Day Suspension dated October 5, 2018.

\section*{Chronology}

This complaint was processed in accordance with the applicable Equal Employment Opportunity Commission (EEOC) regulations, 29 C.F.R. §1614.103 et seq. An investigation was conducted, and a copy of the investigative report was transmitted to the complainant and his representative on November 20, 2018. Following the receipt of that report, the complainant had 30 days within which to request a hearing before an EEOC Administrative Judge (AJ) or a final agency decision without a hearing. As the complainant failed to request either a hearing or a final agency decision without a hearing, this decision is being issued in accordance with 29 C.F.R. §1614.110(b).

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\section*{Applicable Law}

\section*{Disparate Treatment}

The United States Supreme Court established a burden-shifting framework for analyzing claims of discrimination in McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973), and subsequently refined that analysis in Texas Department of Community Affairs v. Burdine, 450 U.S. 248 (1981). The McDonnell Douglas and Burdine approach involves a three-step process when a complainant alleges intentional discrimination based on a disparate treatment theory. The Equal Employment Opportunity Commission has adopted this approach in its decision making. Downing v. U.S. Postal Service, EEOC Appeal No. 01822326 (September 19, 1983); Jennings v. U.S. Postal Service, EEOC Appeal No. 01932793 (April 13, 1994); and Saenz v. Department of the Navy EEOC Request No. 05950927 (January 9, 1998). A complainant alleging discrimination must first demonstrate that there is some substance to his or her claim. To satisfy this burden, the complainant must establish a prima facie case of discrimination for each of the bases of discrimination alleged by a preponderance of the evidence. Furnco Construction Company v. Waters, 438 U.S. 576 (1978).

Although a complainant may establish a prima facie case by presenting direct evidence of discrimination, the more frequent method of establishing a prima facie case is through circumstantial evidence by showing that he or she: (1) belongs to a protected group; (2) was subjected to an adverse employment action; and (3) was treated differently in this regard than similarly situated individuals who were not members of the protected group. Hill v. Department of Veterans Affairs, EEOC Appeal No. 0120063979 (November 28, 2007); Mayberry v. Vought Aircraft Company, 55 F.3d 1086, 1090 ( \(5^{\text {th }}\) Cir. 1995); Mitchell v. Toledo Hospital, 964 F.2d 577, 582-83 ( \(6^{\text {th }} \mathrm{Cir}\). 1992). The failure to establish a specific element of a prima facie case may be overcome by presenting evidence of agency actions from which an inference of discrimination could be drawn if they remained unexplained. Day v. U.S. Postal Service, EEOC Appeal No. 01996097 (September 18, 2000).

Once a prima facie case has been established, the burden of production shifts to the employer to articulate a legitimate, non-discriminatory reason for its action. Furnco 438 U.S. at 578. See also St. Mary's Honor Center v. Hicks, 509 U.S. 502, 506 (1993). The employer need not persuade the trier of fact that the proffered reason was its actual motivation but merely needs to raise a genuine issue of fact as to whether it discriminated against the complainant. Burdine, 450 U.S. at 254; Keval v. Commodity Futures Trading Commission, EEOC Appeal No. 01832127 (November 2, 1984); Hollis v. Department of Veterans' Affairs, EEOC Appeal No. 01934600 (May 3, 1994). If the agency offers no adequate explanation for the discrepancy in treatment between the complainant and similarly situated employees, the agency does not carry its burden of production and the complainant prevails on the basis of the inference of discrimination created by the prima facie case. Frady v. U.S. Postal Service, EEOC Appeal No. 01A05317 (January 10, 2003); Houston v. Department of Veterans' Affairs, EEOC Appeal No. 01976054 (August

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27, 1999); and Parker v. U.S. Postal Service, EEOC Request No. 05900110 (April 30, 1990).

If the employer meets this burden, any presumption of discrimination created by the prima facie case disappears; it simply "drops from the case." Hicks, 509 U.S. at 507 ; U.S. Postal Service Board of Governors v. Aikens, 460 U.S. 711, 715 (1983). See also Hernandez v. Department of Transportation, EEOC Request No. 05900159 (June 28, 1990) and Peterson v. Department of Health and Human Services, EEOC Request No. 05900467 (June 8, 1990). The complainant can then prevail only if he or she proves that the employer's reasons are not only pretext but are pretext for discrimination. Hicks, 509 U.S. at 507 and 516; Nichols v. Grocer, 138 F.3d 563, 566 ( \(5^{\text {th }}\) Cir. 1998); Swanson V. General Services Administration, 110 F.3d 1180, 1185 ( \(5^{\text {th }}\) Cir. 1997). See also Papas V. U.S. Postal Service, EEOC Appeal No. 01923753 (March 17, 1994) and Bradford v. Department of Defense, EEOC Appeal No. 01940712 (September 20, 1994). Thus, the complainant cannot create a factual issue of pretext based merely on personal speculation that there was discriminatory intent. Southard v. Texas Board of Criminal Justice, 114 F.3d 539, 555 ( \(5^{\text {th }}\) Cir. 1997); Lyles v. U.S. Postal Service, EEOC Appeal No. 01A11110 (May 22, 2002); and Nathan v. U.S. Postal Service, EEOC Appeal No. 01995788 (August 29, 2001).

Pretext involves more than a mistake. It means that the reason offered by management is factually baseless, is not the actual motivation for the action, or is insufficient to motivate the action. Tincher v. Wal-Mart Stores, Inc., 118 F.3d 1125, 1130 ( \(7^{\text {th }}\) Cir. 1997) and Morgan v. Hilti, Inc., 108 F.3d 1319, 1323 ( \(10^{\text {th }}\) Cir. 1997). The complainant always carries the "ultimate burden of persuading the trier of fact that he has been the victim of intentional discrimination." Burdine, 450 U.S. at 254 and Hicks, 509 U.S. at 511.

The ultimate burden of persuasion remains with the complainant. Board of Trustees of Keene College v. Sweeney, 439 U.S. 24, 25 N. 2 (1978). This burden was reaffirmed and clarified in St. Mary's Honor Center v. Hicks, supra., where the Court held that in order to impose liability upon an employer for discriminatory employment practices, an ultimate finding of unlawful discrimination is required whether or not the employer's explanation for its action was believable. See also Brewer v. U.S. Postal Service, EEOC Appeal No. 01941786 (June 21, 1994) and Montoya v. Department of Housing and Urban Development, EEOC Appeal No. 01940999 (August 4, 1994).

\section*{Religious Discrimination}

In order to establish a prima facie case of disparate treatment based on religion, a complainant must establish that: (1) he or she is a member of a protected group; (2) he or she was subjected to an adverse employment action; and (3) similarly situated employees outside the complainant's protected group were treated more favorably in like circumstances. Wooten v. U. S. Postal Service, EEOC Appeal No. 01980848 (February 11, 2000); Potter v. Goodwill Industries of Cleveland, 518 F.2d 864 ( \(6^{\text {th }}\) Cir. 1975); and Furnco Construction Company v. Waters, 438 U.S. 576 (1978). A claim of religious

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discrimination due to disparate treatment follows the same allocation of the burden and order of proof as in any Title VII disparate treatment claim.

In order to establish a prima facie case of discrimination based on a failure to accommodate religious practices or beliefs, a complainant must demonstrate by a preponderance of the evidence that he or she: (1) has a bona fide religious belief that conflicts with an employment requirement; (2) informed the employer of this belief and conflict; and (3) that the agency enforced the employment requirement and the complainant suffered an adverse employment action for failing to comply with the conflicting employment requirement. Green v. U. S. Postal Service, EEOC Appeal No. 01982669 (October 5, 1999) and Bishop v. Department of the Air Force, EEOC Petition No. 03970085 (September 16, 1997). See also 29 C.F.R. §1605.1 et seq.

Equal Employment Opportunity Commission guidelines broadly define religious practices to include moral and ethical beliefs as to what is right or wrong which are sincerely held by the individual with the strength of traditional religious views. See also United States v. Seeger, 380 U.S. 164 (1965) and Welsh v. United States, 398 U.S. 333 (1970). Title VII requires an employer to provide an accommodation unless it can show that providing the accommodation would create an undue hardship. The Supreme Court has defined undue hardship in this context as any hardship which is "...more than a de minimis cost." Trans World Airlines v. Hardison, 432 U.S. 63 (1977). The Court also held that an employer was not required to violate the seniority provisions of a collective bargaining agreement in order to achieve an accommodation of an employee's religious beliefs.

\section*{Similarly Situated Employees}

One of the key elements of a prima facie case of disparate treatment based on an adverse employment action is proof that similarly situated comparison employees not in the complainant's protected group were treated more favorably. This is so, in part, because agencies are not monolithic entities. Turner v. Department of the Navy, EEOC Request No. 05900445 (September 25, 1990). In general, in the absence of direct evidence of discrimination, if the complainant cannot identify any similarly situated comparison employees who were treated more favorably, he or she will not prevail. Aguilar v. U.S. Postal Service, EEOC Appeal No. 01944167 (August 8, 1995).

In order for two or more employees to be considered similarly situated for the purpose of creating an inference of disparate treatment, a complainant must show that all of the relevant aspects of his or her employment situation are virtually identical to those of the other employees who he or she alleges were treated more favorably. Smith v. Monsanto Chemical Company, 770 F.2d 719, 723 ( \(8^{\text {th }}\) Cir. 1985); Murray v. Thistledown Racing Club, Inc., 770 F.2d 63, 68 ( \(6^{\text {th }}\) Cir. 1985); Nix v. WLCY Radio/Rahall Communications, 738 F.2d 1181, 1185 ( \(11^{\text {th }}\) Cir. 1984); Mazzella v. RCA Global Communications, Inc., 642 F.Supp. 1531, 1547 (S.D. N.Y. 1986), affd. 814 F.2d 653 (2 \({ }^{\text {nd }}\) Cir. 1987). The Equal Employment Opportunity Commission has on numerous occasions ruled in similar fashion. See, for example, Tolar v. U.S. Postal Service, EEOC Appeal No. 01965083

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(December 16, 1998), citing O'Neal v. U.S. Postal Service, EEOC Request No. 05910490 (July 23, 1991); and Knapp-Huffman v. Department of Justice (Bureau of Prisons), EEOC Appeal No. 01991026 (January 16, 2002).

If employees have different supervisors, perform different job functions, were subject to different job standards, engaged in different conduct, or worked during different time periods, they are not similarly situated. O'Neal, id; Allen v. Department of the Navy, EEOC Request No. 05900539 (June 15, 1990); Willis v. Department of the Treasury, EEOC Appeal No. 01A51459 (March 16, 2003); and Stewart v. Department of Defense, EEOC Appeal No. 01A02890 (June 27, 2001).

For employees to be considered similarly situated, their medical and physical restrictions must be the same as the complainant's. Curtin v. U.S. Postal Service, EEOC Appeal No. 01891910 (March 27, 1990); Briand v. U.S. Postal Service, EEOC Appeal No. 01932677 (February 2, 1994); Woody v. TVA, EEOC Appeal No. 0120063987 (December 17, 2007).

\section*{Background}

At all times relevant to the issue in this complaint, the complainant was employed as a Rural Carrier Associate (RCA) at the Holtwood PA Post Office. (IF, Exhibit 1). The complainant has alleged that Postmaster Brian Hess, Manager, Post Office Operations Keith Krempa; Acting Manager, Post Office Operations Christopher Kruppo and Manager, Labor Relations Lyle Gaines have intentionally discriminated against him on the basis of his Religion (Evangelical Christian) when:
1. On January 16, 2018, he was issued a 7 -Day Suspension;
2. On or around March 6, 2018, he requested a religious accommodation and did not receive a response;
3. On October 9, 2018, he was issued a 14-Day Suspension dated October 5, 2018.

\section*{Claim 1: On January 16, 2018, he was issued a 7 -Day Suspension}

The complainant testified that he signed a 7-Day Suspension paperwork dated January 2, 2018 on January 16, 2018. He averred that it was issued by Postmaster Hess, that Manager Krempa concurred and that it was for Improper Conduct. He declared that Postmaster Hess told him before and during the Pre-Disciplinary Interview (PDI) that the Suspension was issued because the complainant refused to work on two Sundays as scheduled (December 3 and 17, 2018). He averred that he had not worked any Sunday since they started in March 2017 and that his request for religious accommodation was in progress. He averred that there were only three Rural Carriers in the office, Sheila Moyer, Justin Tekely and himself. He declared that Sheila Moore was out on disability on the above referenced dates. He averred that the Suspension paperwork listed a number of reasons from the Employee and Labor Relations Manual (ELM) regarding discharge of duties, obedience to orders, and behavior and personal habits. He stated

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that Postmaster had verbally explained to him that this generally meant he was punished for refusal to obey orders by reporting for duty and for the disruption he was causing in the Holtwood Post Office by not doing his share of the Sunday workload while Justin had to work. He testified that he believed Justin Tekely complained about working those Sundays so much that Postmaster became "incensed" and suspended him despite knowing he was only seeking accommodation for his faith. He stated that he did not file a grievance on this discipline. (IF, Affidavit A, pp. 3-7, 15).

The record included a 7 Day Suspension dated January 2, 2018, charging the complainant with improper conduct when he failed to report to work as scheduled on December 3, and 17, 2017. The Suspension also cited a previously issued Letter of Warning for attendance. (IF, Affidavit A, p. 27-28).

Also included in the record was a copy of the Letter of Warning dated June 9, 2017 charging the complainant with failure to be regular in attendance when he failed to report for work on April 16, 2017 April 23, 2017 and May 7, 2017. (IF, Exhibit 4).

Claim 2: On or around March 6, 2018, he requested a religious accommodation and did not receive a response

The complainant testified that his initial request for religious accommodation was dated January 4, 2018. He averred that when that request was unsuccessful, he submitted a new request for accommodation on March 6, 2018 which has also been unsuccessful so far. He stated that in both cases his request was submitted to Postmaster Hess who passed them on to the appropriate Postal Departments. He declared that in the first request he asked to be exempted from Sunday Amazon delivery altogether in an effort to keep the Lord's day in its entirety-not to be scheduled at all on Sundays. He averred that in the second request he asked for a lateral transfer within the Postal Service to a position that did not require work on Sundays at all. He stated that in response to his initial request to be exempt from work on Sundays, he was told he could come in after church services were completed in the morning and do his work. He testified that he did not consider this a reasonable accommodation because it would not allow him to keep the Lord's day in its entirety and declined that offer. He averred that there has been no response to his second request for a lateral transfer within the Postal Service. (Id., pp. 7-11).

The record included a letter dated January 4, 2018 from the complainant requesting the reasonable accommodation of being relieved of Amazon Sunday delivery. In this letter the complainant explained his religious belief than Sunday was the Lord's Day and he is not to report for work on that day. (IF, Affidavit A, pp. 31-32).

Included in the record was a letter dated March 6, 2018 from the complainant requesting a lateral transfer to a rural carrier associate position that does not require Sunday work. (IF, Affidavit A, p. 33).

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Claim 3: On October 9, 2018, he was issued a 14-Day Suspension dated October 5 , \(\underline{2018}\)

The complainant testified that he signed a 14-Day Suspension paperwork dated October 5, 2018 on October 12, 2018. He averred that it was issued by Postmaster Hess, that Manager Kruppo concurred and that it was for Unsatisfactory Attendance. He declared that Postmaster Hess explained in a letter and verbally during the PDI that the Suspension was issued because the complainant refused to work on June 17, 2018, August 12, 2018 and August 26, 2018 as scheduled. He averred that he had not worked any Sunday since they started in March 2017 because of his belief that Sundays should be devoted entirely to worship and rest. The complainant stated that the suspension paperwork stated that he was charged with violation of the USPS standards of conduct for failure to be regular attendance. He was also charged with violation of maintaining a regular schedule and/or providing evidence for absences when required. He stated that he did not file a grievance on this discipline. (IF, Affidavit A, pp. 17-22).

The record included a 14 Day Suspension dated October 5, 2018, issued to the complainant charging him with unsatisfactory attendance when he failed to report for work on June 17, 2018, August 12, 2018 and August 26, 2018. This suspension cited the previously issued Letter of Warning and 7 Day Suspension as prior elements of discipline. (IF, Affidavit A, pp. 28-30).

\section*{Prima Facie Analysis}

In order to establish a prima facie case of disparate treatment based on religion, a complainant must establish that: (1) he or she is a member of a protected group; (2) he or she was subjected to an adverse employment action; and (3) similarly situated employees outside the complainant's protected group were treated more favorably in like circumstances. Wooten v. U. S. Postal Service, EEOC Appeal No. 01980848 (February 11, 2000); Potter v. Goodwill Industries of Cleveland, 518 F.2d 864 ( \(6^{\text {th }}\) Cir. 1975); and Furnco Construction Company v. Waters, 438 U.S. 576 (1978). A claim of religious discrimination due to disparate treatment follows the same allocation of the burden and order of proof as in any Title VII disparate treatment claim.

The complainant established the first element of a prima facie case by way of his testimony that his religion is Evangelical Christian. (IF, Affidavit A, p. 2). The discipline that the complainant received which forms the basis of Claims 1 and 3 sufficiently impacted the terms, privileges and conditions of the complainant's employment to constitute adverse actions. As the analysis below reveals, the third element of a prima facie case has not been fulfilled because the complainant has not established that he was similarly situated to his comparators.

The complainant alleged that Justin Tekely, a Christian, and Sheila Moyer, a nonChristian, were treated more favorably in that on October 10, 2017, the day after Columbus Day holiday, Postmaster Hess filled his vehicle multiple times with parcels to

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assist them and to make their day easier. (IF, Affidavit A, p. 6). Postmaster Hess testified that he believed that the complainant was confused about the dates and that he was referring to November 13, 2017, the day after Veterans Day. He averred that Justin Tekely, a Christian, was a newer RCA with about eight months part-time experience. (IF, Exhibit 12). The complainant's enter on duty date was July 14, 2012. (IF, Exhibit 1). He stated that he assisted Mr. Tekely on November 13, 2017 because Mr. Tekely was less experienced and had more mail volume than the complainant on that day citing Mr. Tekely's Delivery Point Sequence Mail of 3,421 pieces and 227 Parcels as opposed to the complainant's Delivery Point Sequence Mail of 2,350 pieces and 142 parcels. He noted that the complainant ended his tour of duty at 1651 hours and Mr. Tekely ended his at 1910 hours. Similarly, Sheila Moyer, a non-Christian, with four months part-time experience had Delivery Point Sequence Mail of 3,164 pieces and 181 Parcels on that day. (IF, Exhibit 13). She ended up her tour of duty at 1855 hours. Postmaster Hess further explained that as a manager he assisted the routes that had the most mail volume and the least experienced carriers who would be in jeopardy of not making the last dispatch truck. He stated that knowing the complainant's experience and mail volume he had on November 13, 2017 he knew that the complainant would not need additional assistance to meet the final dispatch truck that left the Holtwood Post Office at 1730 hours. (IF, Affidavit B, pp. 5-7). Thus, neither Mr. Tekely nor Ms. Moyer were similarly situated to the complainant because they had less experience and greater mail volume on the day that Postmaster Hess assisted them and did not assist the complainant in the same manner.

The record included an End of Run Carrier Piece Count report for 17532 from November 10-13, 2017 which confirmed Delivery Point Sequence Mail pieces of 3,420 for Mr. Tekely, 2350 pieces for the complainant and 3,164 pieces for Ms. Moyer.

Moreover, the complainant has not identified any individuals who were not Christian and failed to report for work on Sundays that were not disciplined for failure to report as scheduled. Accordingly, the third element of the prima facie case of disparate treatment discrimination has not been fulfilled.

In order to establish a prima facie case of discrimination based on a failure to accommodate religious practices or beliefs, a complainant must demonstrate by a preponderance of the evidence that he or she: (1) has a bona fide belief that conflicts with an employment requirement; (2) informed the employer of this belief and conflict; and (3) that the agency enforced the employment requirement and the complainant suffered an adverse employment action for failing to comply with the conflicting employment requirement. Green v. U. S. Postal Service, EEOC Appeal No. 01982669 (October 5, 1999) and Bishop v. Department of the Air Force, EEOC Petition No. 03970085 (September 16, 1997). See also 29 C.F.R. §1605.1 et seq.

As noted above, the complainant had a bona fide religious belief the conflicts with an employment requirement, i.e., that he should not work at all on Sundays because it is the Lord's day which should be devoted to worship and rest. He informed the employer of

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his belief and conflict. Finally, he suffered employment adverse actions in the form of 7Day and 14-Day Suspensions. Accordingly, the complainant has fulfilled the requirements of a prima facie case of discrimination based on a failure to accommodate religious practices or beliefs

Although the determination had been made that the complainant satisfied the essential requirements of a prima facie claim of religion relative to this claim, it is important to point out that such a finding is not the equivalent of a finding of discrimination. It is simply be proof that, without more, the circumstances involving management actions have given rise to an inference that discrimination did occur. Thus, the burden now shifts to management to produce admissible evidence that its actions were taken for legitimate, non-discriminatory reasons. The agency has satisfied that burden, via record evidence further outlined below.

\section*{Management's Non-Discriminatory Reason}

Assuming, but only for the sake of argument, that the complainant has established a prima facie case of discrimination based on religion, management has articulated a legitimate, non-discriminatory explanation for their actions.

\section*{Claim 1: On January 16, 2018, he was issued a 7 -Day Suspension}

Postmaster Hess testified that the complainant was given a 7-day suspension for refusing to report to work to deliver Sunday Amazon at the Holtwood Post Office on December 3, 2017 and December 17, 2017. He averred that the complainant was previously issued a Letter of Warning on June 9, 2017 for failing to report to work as scheduled to deliver Sunday Amazon at the Lancaster Carrier Annex. He stated that the complainant was scheduled for Amazon Sunday delivery on December 3 and December 17, 2017, but he refused to work due to his religious beliefs. He declared that the complainant had been informed on several occasions in the past that his start time on Sundays could be adjusted for him to attend his church service. He averred that the complainant had declined that accommodation and stated the only accommodation that he would accept was having the whole day of Sunday off as a day of rest. At the time of the discipline was issued, the Holtwood Post Office had three RCA's, Gerald E. Groff, Justin M. Tekely and Sheila Moyer. All three rural carrier associates (Gerald, Justin and Sheila) had signed the Sunday/Holiday Amazon Volunteer List requesting NOT to work Sundays. In order to follow the National Rural Letter Carriers' Association union contract (since there were no Sunday/Holiday volunteers at the Holtwood Post Office), he scheduled the RCA's starting with the junior RCA and made a rotation for the Sundays that Amazon would be delivered. Sheila Moyer was injured on duty on December 1,2017 and out on extended leave, which only left Gerald E. Groff and Justin Tekely to rotate the Sundays that delivery would be needed. Postmaster Hess noted that Justin Tekely attended church and his start time was adjusted so that he could attend his church services on the Sundays that he was scheduled. (IF, Affidavit A, pp. 27-30; Affidavit B, p. 3).

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The record contained copies of the Holtwood Schedules from December 2, 2017 through January 5,2018 . These schedules confirmed that the complainant was only scheduled for Sunday work on December 3 and 17, 2017, and noted he refused to work based on his religious beliefs. (IF, Exhibit 8).

The Holtwood Sunday/Holiday Amazon Volunteer List dated October 2, 2017 confirming there were three RCAs, the complainant, Tekely and Moyer, all who declined to volunteer for this work. (IF, Exhibit 9).

Postmaster Hess testified that the complainant acknowledged that he knew it was his duty to report to work as scheduled and acknowledged that he understood that Sunday work may be required as stated in the National Rural Letter Carriers' Association's Contract Article 30.2.P titled Sunday Work. The complainant stated that if he worked on December 3 and December 17 that he would be working seven days straight. He was not scheduled all seven days at the Holtwood Post Office. He opted to work at the Quarryville Post Office on the days that he was not scheduled to work at the Holtwood Post Office for his own benefit. Postmaster Hess testified that he explained to the complainant there was not a written rule in the National Rural Letter Carriers' Association's contract that forbade RCA's from working more than seven days straight. National Rural Letter Carrier Union Steward Barbara Callahan also confirmed and further explained to the complainant that there was no contract clause that excluded RCA's from working more than seven days in a row. (IF, Affidavit B, p. 3).

Postmaster Hess testified that the complainant's religion was not a factor when he was given the 7-Day Suspension. He averred that it was issued because of the complainant's failure to report to work as scheduled. He declared that he was abiding by the National Rural Letter Carriers' Contract, Article 30, Section 2, P. He explained that the Holtwood Post Office did not have any RCA volunteers for the Sunday/Holiday Work list, so a schedule was created starting with the junior RCA, Sheila Moyer, covering the first Sunday. (IF, Affidavit B, p. 4).

Included in the record was National Rural Letter Carriers' Contract, Article 30, Section 2, P. which provided:

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 work prior to selecting qualified employees from the list. The Employer will make every reasonable effort to avoid requiring substitutes, RCAs, and RCRs not on the list to work. (IF, Exhibit 17, pp. 5-6).

Manager Krempa testified that he concurred in the issuance of the 7-Day Suspension because the complainant failed to report as scheduled for Amazon work on Sundays. He averred that the complainant's religion was not a factor in his concurrence. (IF, Affidavit C, p. 3).

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Claim 2: On or around March 6, 2018, he requested a religious accommodation and did not receive a response

Postmaster Hess testified that on January 4, 2018 the complainant presented a written request to have the entire day of Sunday off as a day of rest, not just part of it. On March 6, 2018, he presented a written request for a lateral transfer within the United States Postal Service to a position that did not require working on Sundays. Postmaster Hess averred that the complainant was sent via US Mail a response to his request on July 17, 2018. He stated that he personally also hand delivered a response to the complainant's religious accommodation request as well to ensure the complainant received it on July 18,2018 . The request to have all of Sunday off was not granted. The complainant was offered the accommodation of having a modified schedule on Sunday which he refused to accept. Postmaster Hess averred that he also informed the complainant on approximately June 8, 2018 that attempts would be made to find volunteers to cover the Sundays that he was scheduled to work. (IF, Affidavit B, p. 8).

Postmaster Hess testified in response to the complainant's March 6, 2018 religious accommodation request a teleconference was held with the complainant, Lyle Gaines (Manager Labor Relations Central PA District) and himself on Monday March 26, 2018. Lyle Gaines led the teleconference and asked the complainant questions in regard to his religious accommodation request. (/d.)

Postmaster Hess stated that no documentation had been received from the clergy of the church that the complainant attended in reference to any restrictions on working Sundays. In early January 2018 the complainant was asked to provide a written statement from his clergy about his church attendance, responsibilities at the church and Sunday requirements that his Church had. He balked at asking his church for such a statement since he was not a member of the congregation. Instead, he submitted his own statement. (Id., p. 9.)

Included in the record was a letter from the complainant dated January 4, 2018 advising that he regularly attends the Greenville campus of the Victory Church in Lancaster, PA. (IF, Exhibit 3).

With regard to the complainant's request for a lateral transfer within the United States Postal Service to a position that did not require working on Sundays, Postmaster Hess explained that complainant as an RCA occupied a non-career position and that all United States Postal Service non-career positions were required to work on Sundays as written in their collective bargaining agreements. He averred that he did not know of any noncareer positions to which the complainant could be transferred that would not require working on Sundays. Postmaster Hess stated this accommodation was discussed on the teleconference with Lyle Gaines Manager Labor Relations Central PA District on March 26, 2018. (ld.)

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Postmaster Hess testified that since June 7,2018 when the complainant was scheduled to work a Sunday at the Lancaster Carrier Annex Sunday Amazon Hub, he had solicited all the unscheduled RCA's of the Lancaster Carrier Annex Sunday Amazon Hub to see if they would work for the complainant. He explained that since the implementation of the Lancaster Carrier Annex Sunday Hub the Holtwood Post Office RCA's report there on Sundays and holidays. He averred a list was maintained of RCA's who volunteered to work and Sundays and holidays. He stated the volunteer assistant rural carriers and RCA's were always scheduled first. The other RCA's who did not wish to work were then scheduled on a rotating basis alphabetically by last name since there were not enough volunteers. Since the volunteers were automatically scheduled to work there was no RCA's associates that the complainant could switch with. He declared that he found RCA's to work for the complainant on Sunday July 1, 2018 and July 15, 2018. (Id.)

Postmaster Hess explained that he could not mandate RCA's from other offices to work Sundays for the complainant because, excluding the Amazon Sunday/Holiday Hubs which they were assigned to by geographic area, they were responsible to their home offices. He declared that RCA's could not be forced/mandated to work in another office. During the holiday peak delivery season all the post offices received Sunday Amazon directly at their office. He maintained that there was a shortage of RCA's in many post offices which compounded the Issue of finding rural delivery assistance. He stated that based on not being able to "mandate" other rural carrier associates to cover the Holtwood Post Office, the other offices trying to cover their Sunday delivery operation and a shortage of available RCA's the idea of bringing in another RCA from another office was not plausible. (Id., p. 10).

Postmaster Hess testified that he informed the complainant that attempts would be made to find volunteers to cover his scheduled Sundays. If no volunteers were available, he was offered the religious accommodation of a modified Sunday schedule, the same accommodation offered to other employees in the same situation. Postmaster Hess averred that on July 20, 2018 he asked the complainant if the resolution and religious accommodation offered was acceptable. The complainant stated that it was not and that it had been offered to him before and that was not what he was asking for. (Id., pp. 1011).

Labor Relations Manager Gaines testified that the complainant requested through his Postmaster not to work on Sundays. He averred that he responded through email to the Postmaster and eventually followed with a written response to the complainant. In a letter dated July 17, 2018, Manager Gaines stated:

Since our meeting it was communicated to your Postmaster that we must make attempts to find volunteers in order to provide you the accommodation that you seek. I considered all information provided by you and in accordance with the above. Other than attempting to find volunteers, the only other alternative is to allow you to have a modified schedule the same as other employees equally situated to you.

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Gerald E. Groff
Agency Case Number 4C-170-0030-18
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Manager Gaines testified that he considered alternate positions, but no steps were taken to transfer the complainant because as a non-career employee he would be required to work Sundays even if he was transferred to another position. (IF, Affidavit D, pp.3-5).

In summary, as noted above, management applied the collective bargaining agreement in scheduling the complainant for Sunday work. Excusing the complainant from Sunday work would have violated the rights created by the collective bargaining agreement for the complainant's coworkers. Management offered the complainant an accommodation which would have permitted him to worship on Sundays. Moreover, it sought and obtained volunteers to work on Sunday in his place. A lateral transfer was not a plausible accommodation since the complainant as a noncareer employee would still have to work Sundays in another location.

\section*{Claim 3: On October 9, 2018, he was issued a 14-Day Suspension dated October 5. \(\underline{2018}\)}

Postmaster Hess testified that he issued the complainant a 14-Day Suspension on October 12, 2018 because of his refusal to report as scheduled for work on June 17, 2018, August 12, 2018 and August 26, 2018. He averred that there were no volunteers available on those days. He stated that he relied on the following provisions of the ELM: Section 511.43 (Employees are expected to maintain their assigned schedule.); Section 665.15 (Employees must obey the instructions of their supervisor.); and Section 665.41 (Employees are required to be regular in attendance, failure to be regular attendance may result in disciplinary action.). He also relied on the National Rural Letter Carriers' Association Labor Contract and the Memorandum of Understanding between the USPS and the NRLCA providing that the parties agreed that rural carrier leave replacements would be assigned as appropriate to complete Sunday/holiday parcel deliveries. He stated that the complainant's religion was not a factor when he was issued the 14-Day Suspension and that to his knowledge the complainant did not file a grievance on it. (IF, Affidavit A, pp. 29-30; Affidavit B, pp. 14-16; Exhibit 18, p. 2-6).

Record evidence in the form of emails Postmaster Hess sent to other Post Offices revealed he was unsuccessful in his attempts to obtain volunteers to work for the complainant on August 12, 2018 and August 26, 2018. (IF, Exhibit 10).

Manager Kruppo testified that he concurred in issuing the complainant the 14-Day Suspension because of his failure to report to work on Sunday as scheduled. He noted a Letter of Warning and 7-Day Suspension had previously been issued to the complainant. He averred that the complainant's religion was not a factor in his concurrence. (IF, Affidavit E, pp. 3, 6).

Based on the evidence in the record, management has established their nondiscriminatory reasons for their actions. This analysis will now address whether there is evidence of pretext.

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\section*{Pretext}

At this point, the complainant has the burden of proving that management's stated reason is not only pretext, but is pretext for intentional discrimination. Tincher v. Wal-Mart Stores, Inc., 118 F.3d 1125, 1129 ( \(7^{\text {th }} \mathrm{Cir}\). 1997).

The complainant averred that management disrespected his religious beliefs because they refused to grant his requested accommodation of not being acquired to work on Sundays at all. He averred that as a result he was punished for following his conscience by being issued the Suspensions described above. The complainant, however, has not established that management's reasons for not granting the accommodation he requested and for issuing the discipline were not the real reasons or that they were a pretext for discrimination on the basis of his Christian religion.

The complainant's allegations are not supported by the totality of the record and he has failed to present any plausible evidence that would demonstrate that management's reasons for its actions were factually baseless or not its actual motivation. Tincher v. WalMart Stores, Inc. and Morgan v. Hilti, Inc., Id. A complainant's subjective beliefs cannot be probative evidence of pretext and, therefore, cannot be the basis of judicial relief. Elliot v. Group Medical \& Surgical Service, 714 F.2d 556, 557 (5 \(5^{\text {th }} \mathrm{Cir}\). 1983), cert. denied, 467 U.S. 1215, (1984); see also, Billet v. CIGNA Corp., 940 F.2d 812, 816 (3rd Cir. 1991). The complainant cannot second-guess the wisdom of the agency's business decisions. Thus, agencies are free to discharge, promote, demote, or transfer individuals for any reason, fair or unfair, so long as the decision is not a pretext for discrimination. Damon v. Fleming Supermarkets of Florida, Inc., 196 F.3d 1354, 1361 (11th Cir. 1999); Nix v. WLCY Radio/Rahall Communications, 738 F.2d 1181, 1187 (11 \({ }^{\text {th }}\) Cir. 1984).

In other words, there was nothing that showed by a preponderance of the evidence that the legitimate explanations given by the agency were pretext for discrimination. Hammons v. HUD, EEOC Request No. 05971093 (March 5, 1999). Hence, the complainant has not shown that the agency's explanation for its action is a pretext for discrimination.

\section*{Conclusion}

After carefully considering the entire record, and applying the legal standards outlined in McDonnell Douglas Corporation v. Green, 411 U.S. 792 (1973), the evidence does not support a finding that the complainant was subjected to discrimination as alleged. Consequently, this complaint is now closed with a finding of no discrimination.

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Final Agency Decision
Gerald E. Groff
Agency Case Number 4C-170-0030-18
Page 15

\section*{Appeal Rights}

\section*{APPEAL TO EEOC}

The complainant has the right to appeal the Postal Service's final decision to the:

\author{
Director, \\ Office of Federal Operations \\ Equal Employment Opportunity Commission (EEOC) \\ P.O. Box 77960 \\ Washington, DC 20013-8960
}
within 30 calendar days of receipt of this decision. The complainant must use EEOC Appeal Form 573, a copy of which is enclosed, in connection with the appeal. The complainant may also deliver the appeal in person or by facsimile provided that briefs filed by facsimile are ten or fewer pages in length. Any supporting statement or brief must be submitted to the EEOC within 30 calendar days of filing the appeal. Along with the appeal, the complainant must submit proof to the EEOC that a copy of the appeal and any supporting documentation and/or brief were also submitted to the:

\title{
NEEOISO - FAD \\ National EEO Investigative Services Office \\ USPS
}
P. O. Box 21979

Tampa, FL 33622-1979
The complainant is advised that if the complainant files an appeal beyond the 30-day period set forth in the Commission's regulations, the complainant should provide an explanation as to why the appeal should be accepted despite its untimeliness. If the complainant cannot explain why the untimeliness should be excused in accordance with EEOC Regulation 29 C.F.R. \(\S 1614.604\), the Commission may dismiss the appeal as untimely.

\section*{RIGHT TO FILE A CIVIL ACTION}

Alternatively, if the complainant is dissatisfied with the Postal Service's decision in this case, the complainant may file a civil action in an appropriate U.S. District Court within 90 calendar days of receipt of the Postal Service's final decision, within 90 calendar days of the EEOC's final decision on any appeal, or after 180 days from the date of filing an appeal with the EEOC if no final decision has been rendered. If the complainant chooses to file a civil action, that action should be styled Gerald E. Groff v. Megan J. Brennan, Postmaster General. The complainant may also request the court to appoint an attorney for the complainant and to authorize the commencement of that action without the payment of fees, costs, or security. Whether these requests are granted or denied is

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Final Agency Decision
Gerald E. Groff
Agency Case Number 4C-170-0030-18
Page 16
within the sole discretion of the District Judge. The application must be filed within the same 90-day time period for filing the civil action.

\section*{Chergl Hendon \\ Cheryl Hendon}

EEO Services Analyst Date: January 25, 2019
NEEOISO
P. O. Box 21979

Tampa, FL 33622-1979
Enclosure: EEOC Appeal Form 573
cc:
Complainant
Gerald E. Groff
New Providence, PA 17560-9680
USPS Tracking No. 9114901496451657776493
Representative
David Crossett, Esq.
8500 Allentown Pike, Ste 3
Blandon, PA19510-9460
USPS Tracking No. 9114901496451657776509

\section*{ TO THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION OFFICE OF FEDERAL OPERATIONS \\ P.O. Box 77960 \\ Washington, DC 20013}

Complainant Information: (Please Print or Type)
\begin{tabular}{|l|l|}
\hline Complainant's name (Last, First, M.I.): & \\
\hline Home/mailing address: & \\
\hline City, State, ZIP Code: & \\
\hline Daytime Telephone \# (with area code): & \\
\hline E-mail address (if any): & \\
\hline
\end{tabular}

\section*{Attorney/Representative Information (if any):}
Attorney name:

Non-Attorney Representative name:
\begin{tabular}{|l|l|}
\hline Address: & \\
\hline City, State, ZIP Code: & \\
\hline Telephone number (if applicable): & \\
\hline E-mail address (if any): & \\
\hline
\end{tabular}

\section*{General Information:}

Name of the agency being charged with discrimination:
Identify the Agency's complaint number:

Location of the duty station or local facility in which the complaint arose:
Has a final action been taken by the agency, an Arbitrator, FLRA, or MSPB on this complaint?

Has a complaint been filed on this same matter with the EEOC, another agency, or through any other administrative or collective bargaining procedures?


Has a civil action (lawsuit) been filed in connection with this complaint?
\begin{tabular}{|l|}
\(\square\) \\
\(\square\) \\
\(\square\)
\end{tabular}

NOTICE: Please attach a copy of the final decision or order from which you are appealing. If a hearing was requested, please attach a copy of the agency's final order and a copy of the Commission Administrative Judge's decision. Any comments or brief in support of this appeal MUST be filed with the EEOC and with the agency within \(\mathbf{3 0}\) days of the date this appeal is filed. The date the appeal is filed is the date on which it is postmarked, hand delivered, or faxed to the Commission at the address above.

Please specify any reasonable accommodations you will require to participate in the appeal process:
\begin{tabular}{|l|l|}
\hline \begin{tabular}{l} 
Signature of complainant or \\
complainant's representative:
\end{tabular} & \\
\hline Date: & \\
\hline Method of Service on Agency: & \\
\hline Date of Service: & \\
\hline EEOC Form 573 REV 2/09 & CONFIDENTIAL \\
\hline
\end{tabular}

EEOC Form 573 REV 2/09

\section*{PRIVACY ACT STATEMENT}
(This form is covered by the Privacy Act of 1974. Public Law 93-597. Authority for requesting the personal data and the use thereof are given below.)
1. FORM NUMBER/TITLE/DATE: EEOC Form 573, Notice of Appeal/Petition, February 2009
2. AUTHORITY: 42 U.S.C. § 2000e-16
3. PRINCIPAL PURPOSE: The purpose of this questionnaire is to solicit information to enable the Commission to properly and effectively adjudicate appeals filed by federal employees, former federal employees, and applicants for federal employment.
4. ROUTINE USES: Information provided on this form may be disclosed to: (a) appropriate federal, state or local agencies when relevant to civil, criminal, or regulatory investigations or proceedings; (b) a Congressional office in response to an inquiry from that office at your request; and (c) a bar association or disciplinary board investigating complaints against attorneys representing parties before the Commission. Decisions of the Commission are final administrative decisions, and, as such, are available to the public under the provisions of the Freedom of Information Act. Some information may also be used in depersonalized form as a data base for statistical purposes.
5. WHETHER DISCLOSURE IS MANDATORY OR VOLUNTARY AND EFFECT ON INDIVIDUAL FOR NOT PROVIDING INFORMATION: Since your appeal is a voluntary action, you are not required to provide any personal information in connection with it. However, failure to supply the Commission with the requested information could hinder timely processing of your case, or even result in the rejection or dismissal of your appeal.

\author{
You may send your appeal to: \\ The Equal Employment Opportunity Commission \\ Office of Federal Operations \\ P.O. Box 77960 \\ Washington, D.C. 20013
}

Fax it to (202) 663-7022 or submit it through the Commission's electronic submission portal.

\title{
UNITED STATES POSTAL SERVICE EQUAL EMPLOYMENT OPPORTUNITY IN THE MATTER OF:
}
\begin{tabular}{l}
\hline Gerald Groff \\
\hline New Providence, PA 17560-9680 \\
Complainant, \\
\(\quad v\) \\
MEGAN J BRENNAN \\
Postmaster General \\
United States Postal Service \\
Eastern Area \\
Agency.
\end{tabular}
Delivery Confirmation Complainant: 9114902307224362668131

Delivery Confirmation Representative: 9114902307224362668148

Agency Case Number: 4C-170-0041-19

Date Formal Filed: April 27, 2019

\section*{DISMISSAL OF FORMAL EEO COMPLAINT}

The agency acknowledges the receipt of the formal complaint of discrimination referenced above. Enclosed is PS Form 2570, EEO Dispute Resolution Specialist's Inquiry Report. This is the Postal Service's final decision on the above-cited discrimination complaint.

Specific Issue(s) Alleged: You alleged Dsicrimination based on Religion (Evangelical Christian) in that on January 19, 2019, you felt forced to resign when: you were not accommodated per your religious beliefs and the next step in the discipline process would be your removal.

\section*{Chronology}

The record reflects you requested pre-complaint processing on March 4, 2019 and a Notice of Right to File an Individual Complaint of Discrimination (PS Form 2579-A) was received by you on April 19, 2019. Subsequently, you filed a formal complaint of discrimination with the Agency on April 27, 2019.

\section*{Analysis and Conclusion}

Equal Employment Opportunity Commission (EEOC) Regulations 29 C.F.R. 1614.107(a)(1) provide that the agency shall dismiss an entire complaint that states the same claim that is pending before or has been decided by the agency or Commission.

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The Commission has held that the same claim is one that sets forth identical matters. Terhune v. United States Postal Service, EEOC Request No. 05950907 (July 18, 1997). For purposes of determining whether a new complaint states the same claim, the Commission focuses on the action(s) or practice(s) of the agency about which the complainant complains. Meros v. Department of Commerce, EEOC Request No. 05950690 (January 10, 1997).

The Commission has long held that the agency or its designee shall reject those allegations where the matters raised are identical and arise from the same transaction. Alfredo Mathew v. Equal Employment Opportunity Commission, EEOC No. 01830800, (October 4, 1983).

Review of the instant complaint reveals it is the same matter raised in Agency Case No. 1C-170-0051-17 and 1C-170-0030-18. On October 15, 2018, you amended 1C-170-0030-18 to include a 14 Day Suspension. You appealed the Agency's finding of no discrimination to OFO on or around March 6, 2019. The Commission has long held the agency must dismiss an allegation that is pending before or has been decided by the agency or commission. See Rainville v. U.S. Postal Service, Appeal No. 01A51952 (May 4, 2006), Porter v. U.S. Postal Service, EEOC Appeal No. 01A02013 (February 12, 2003), Hogan v. U.S. Postal Service, EEOC Appeal No. 01A24892 (January 30, 2003), Figueroa v. U.S. Postal Service, EEOC Appeal No. 01A20510 (January 22, 2003), Smith v. U.S. Postal Service, EEOC Appeal No. 01A14221 (November 5, 2002), Mozee v. U.S. Postal Service, EEOC Appeal No. 01A20805 (October 16, 2002), Bailey v. U.S. Postal Service , EEOC Appeal No. 01A20804 (October 11, 2002).

The issue raised in the instant complaint is merely a reiteration and extension of the previous complaint. There is no indication that the original fact pattern is distinctly different from that of the instant complaint. You are alleging not being accommodated per your religious beliefs by being permitted to not work on Sundays. This complaint was appealed to OFO in Agency Case No. 1C-170-0030-18. While you relate that you felt forced to retire because the next step in discipline was a Removal, you do not relate that you actually were removed. Therefore, the only issue is your denial of religious accommodation.

Therefore, your complaint alleging discrimination as cited above is now dismissed as stating the same claim that is pending before or has been decided by the agency or Commission in accordance with 29 C.F.R. 1614.107(a)(1).
with 29 C.F.R. 1614.107(a)(1).

\section*{Appeal to the Equal Employment Opportunity Commission}

If you are dissatisfied with this decision you may appeal to the Equal Employment Opportunity Commission within 30 calendar days of the date of your receipt of the

Agency's final action, or, if you are represented by an attorney, within 30 calendar days of your attorney's receipt of this action. The appeal must be in writing and filed with the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 77960, Washington, D.C. 20013-8960, or facsimile to (202) 663-7022. The complainant should use EEOC Form 573, Notice of Appeal/Petition, (attached to the agency's decision) and should indicate what he or she is appealing. Any supporting statement or brief must be submitted to the EEOC within 30 calendar days of filing the appeal. A copy of the appeal and any supporting documentation must also be submitted to the agency's designated office: National EEO Investigative Services Office, P.O. Box 21979, Tampa, FL 33622-1979. In or attached to the appeal to the EEOC, you must certify the date and method by which service of the appeal was made on the agency's office.

Failure to file within the 30-day period could result in the EEOC's dismissal of the appeal unless you explain, in writing, extenuating circumstances which prevented filing within the prescribed time limit. In this event, extending the time limit and accepting the appeal will be discretionary with the EEOC.

If you file an appeal with the EEOC's Office of Federal Operations, you may thereafter file a civil action in an appropriate U.S. District Court within 90 calendar days of your receipt of the Office of Federal Operations' decision. A civil action may also be filed after 180 calendar days of your appeal to the EEOC, if you have not received a notice of final action on your appeal.

\section*{Right to file a civil action}

In lieu of filing an appeal with the Equal Employment Opportunity Commission, you may file a civil action in an appropriate U.S. District Court within 90 calendar days of your receipt of this decision. If you choose to file a civil action, that action should be captioned Gerald Groff vs. Megan J. Brennan, Postmaster General, U.S. Postal Service. You may also request the court to appoint an attorney for you and to authorize the commencement of that action without the payment of fees, costs, or security in such circumstances as the court deems just. Your application must be filed within the same 90 -day time period for filing the civil action.

\section*{Gil Grion}

May 20, 2019
EEO Services Analyst
DATE
Enclosures: PS Form 2570, EEO Dispute Resolution Specialist's (DRS) Inquiry Report EEOC Form 573, Notice of Appeal/Petition

Cc: David Crossett Esq, 8500 Allentown Pike Ste 3, Blandon, PA 19510-9101
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16. Explain the specific action(s) or situation(s) that resulted in you alleging that you were discriminated against (treated differently than other employees or applicants) because of your race, color, religion, sex, age ( \(40+\) ), national origin, genetic information, disability, or retaliation for participation in a protected EEO activity. Note that if your allegation is similar or related to a previous complaint, that complaint may be amended . 29 C.F.R. \(\mathcal{S}\) 1614.106(d). Please use additional pages if necessary.

ON JANUPROY 19,2019, I WAS COASTRUCTIUEYY DISCHARGED FRGM MY POSITION AS A RURAL CARRIER ASSUCIATE AT THE HOLTWOUD; PA POST OPFICE DUE TO AN ONGO ING LACK OF ANCOMMORATION FORMY RELGHOUS BELEFS TO KEEPTHE LORD'S DAY (S UNDAY) IN ITS ENTIRETY WTITOUT BEING REQGLRED TO WORK THAT DAY (OR AMY SUNDAY), AND THE SUBSEQLENT DISCIPLANE I RECEIVED FROM AM EMPLSYER/MANAGEMENT SINCE NO ACEOMmODATI ON WNS MOLY TO ENAZLE ME TO NEFP THE ENTIRE LORO5 PHY (SUNDHYS) AS LM ALE 4 HOCY AS A MUST NOT BE REQULRE TU WOEK AT ALL. I AM REQUGSTING A CLAM UF CONSTMLTVE DISCHARGF AS A RESUUT OF A CACK OF RECGOUS ACCOMMOOATIOW \(A\) AN GNGOING HOSTILE WORK EMMRONMENT THAT I EXPERIENLED FRO USPS MANAGEANFNT, 17. What remedy are you seeking to resolve this complaint?

RECEIVED
TO BE MADE WHOLE; ATTORNEY FEES + COSTS


Case 5:19-cv-01879-JLS Document 36-2 Filed 02/14/20 Page 186 of 356

Privacy Act Statement: Your information will be djudicate complaints of
alleged discrimination and to evaluate the effectiv. of the EEO program. Colalleged discrimination and to evaluate the effectiv lection is authorized by 39 U.S.C. 401, 409, 410, 1001, 1005, and 1206. Providing the information is voluntary, but if not provided, we may not be able to process your request. We may disclose your information as follows: in relevant legal proceedings; to law enforcement when the U.S. Postal Service - (USPS • ) or requesting agency be comes aware of a violation of law; to a congressional office at your request; to entities or individuals under contract with USPS; to entities authorized to perform audits; to labor organizations as required by law; to federal, state, local or foreign government agencies regarding personnel matters; to the Equal Employment Opportunity Com mission; and to the Merit Systems Protection Board or Office of Special Counsel. For more information regarding our privacy policies, visit www.usps.com/privacypolicy.

Rehabilftation Act Notice: Und ehabilitation Act, medical information is confidential and may only be requ or disclosed in very limited circumstances. Medical documentation about the complainant's and possible comparison employees' medical conditions and work restrictions may be requested in connection with the investigation of an EEO complaint. Information about medical restrictions (but not medical conditions) obtained in the course of an EEO investigation may be disclosed to supervisors and managers who need to know about restrictions on the work or duties of the employee and about necessary accommodations. Supervisors and managers are not permitted to share such information with peers or subordinates or to discuss the information with those who have no need to know and whose requests for the information are not job-related and consistent with business necessity.
A. Use this form to file a formal complaint if you are an employee or applicant who believes that you have been discriminated against by the Postal Service because of your race, color, religion, sex (male, female), sex (LGBT), age ( \(40+\) ), national origin, genetic information, disability, or retaliation for participation in a protected EEO activity. You must have presented the matter to an EEO alternative dispute resolution (ADR) specialist within 45 calendar days of the date the incident occurred or, if a personnel action is involved, within 45 calendar days of the effective date of the personnel action. Mail the completed formal complaint to the following address:

NEEOISO - Formal Complaints
U.S. Postal Service

PO Box 21979
Tampa, FL 33622-1979
B. Unless you have agreed to extend the 30-day period for an additional 60 calendar days, you will receive a notice of right to file a formal complaint within 30 calendar days from the date of your first contact with the EEO Office. You must file your formal complaint within 15 calendar days of the date on which you receive your notice of right to file. If you do not receive a notice of right to file within the appropriate time period, you may file a formal complaint at any time thereafter, up to 15 calendar days after receiving the notice.
C. If you have agreed to participate in ADR, the informal process must be completed within 90 calendar days of your first contact with the EEO office. You have a right to file a formal complaint at any time thereafter, up to 15 calendar days after you have received your notice of right to file.
D. Your notice of right to file contains the address where your formal complaint must be mailed or delivered and the address is listed in Part A of these instructions. The formal complaint will be deemed timely if it is received or postmarked before the expiration of the 15 -day filing period, or, in the absence of a legible postmark, if it is received by mail within 5 days of the expiration of the filing period.
E. The time limits for filing a formal complaint may be extended if you show that you were prevented by circumstances beyond your control from submitting the complaint by the time limit, or if you present other reasons considered sufficient by the Postal Service.
F. If you need help in preparing this form, you may get assistance from a representative of your choice. You may also seek guidance from the EEO ADR Specialist who issued you the notice of right to file.
G. Your formal complaint must be in writing and must be signed and dated by you or your attorney. You are entitled to a representative of your choice at all stages of the EEO complaint process; however, only an attorney can sign official EEO documents on your behalf
H. If your written complaint is accepted, it will be assigned to an EEO complaints investigator who will provide you with an opportunity to present all facts that you believe resulted in the alleged discrimination. The EEO complaints investigator will conduct a thorough review of the circumstances under which the alleged discrimination occurred.
I. While your complaint is under investigation, you may amend it to add claims that are similar or related. Contact the EEO office for the address where your written amendment request must be mailed or delivered.
J. You or your representative will each be provided a copy of the completed investigative file, You have the right to request a hearing within 30 calendar days of the date you receive the investigative file by mailing or delivering your request to the appropriate Equal Employment Opportunity Commission (EEOC) District Office with a copy sent to the following address:

NEEOISO - Formal Complaints
U.S. Postal Service

PO Box 21979
Tampa, FL 33622-1979
CONFIDENTIAL
If you are represented by an attorney, the 30 -day period will begin on the date your attorney receives a copy of the case file. Instead of requesting a hearing, you may request an agency decision without a hearing and the head of the agency or his/her designee will issue you a decision letter with appeal rights.
K. If you request a hearing, the EEOC will appoint an administrative judge (AJ) to conduct a hearing. The AJ will notify you and the Postal Service of the right to seek discovery before to the hearing to develop evidence reasonably on matters relevant to the issues raised in the complaint(s) to be heard. Attendance at the hearing will be limited to persons the \(\mathrm{A} J\) determines have direct knowledge relating to the complaint. Hearings are part of the investigative process and are closed to the public.
L. Following the hearing, the AJ will send you and the agency a copy of the hearing record, including the transcript and his/her decision. The head of the agency, or his/her designee, will review the entire record, including the transcript, and will determine whether or not to implement the AJ's decision. You will receive the agency's notification of final action within 40 days of the date the agency receives the A's decision. If the agency's final action will not fully implement the A's decision, the agency must appeal to the EEOC. A copy of the Postal Service's appeal will be attached to your notification of final action.
M. If you are not satisfied with the decision of the \(A J\), or the agency's final action on the decision, you have the right to appeal within 30 calendar days after receiving notification of the agency's final action. Your appeal must be mailed to the EEOC at the following address:

\section*{EEOC Office of Federal Operations}

Federal Sector Programs
PO Box 77960
Washington, DC 20013-8960
You also must provide proof to the EEOC that a copy of the appeal, and any supporting documentation, was submitted to NEEOISO at the following address:

\section*{NEEOISO}
U.S. Postal Service

PO Box 21979
Tampa, FL 33622-1979
N. In lieu of filing an appeal of the agency's final action to the EEOC's Office of Federal Operations (OFO), you may file a civil action in an appropriate U.S. District Court within 90 calendar days of your receipt of the agency's final action.
O. You may also file a civil action in an appropriate U.S. District Court: (1) after 180 calendar days have passed from the date you filed the complaint, if the final agency action has not been issued and an appeal has not been filed; (2) within 90 days of receipt of the OFO's decision on your appeal; or (3) after 180 days have passed from the date you filed your appeal with the OFO, if there has been no decision issued on that appeal.
P. Special provisions exist for age discrimination. The law sets forth the right to bypass the administrative complaint processing procedure and file a civil action. For additional information, contact the EEO office.
Q. Under the Equal Pay Act, you have the right to file a civil action without exhausting the administrative procedures.
R. You must keep the EEO complaint processing office aware of your current mailing address at all times. Failure to notify the NEEOISO- EEO Contact Center and the EEOC of an address change could result in the dismissal of your complaint.

\title{
Notice of Right to File Individual Complaint
}

This notice will attest to the fact that on April 11, 2019 I advised you of the actions taken concerning the alleged discrimination that you brought to my attention. If the matters that you raised during the pre-complaint processing stage have not been resolved, you have the right to file a formal complaint within 15 calendar days of the date you receive this notice. If you decide to file a formal complaint, your complaint must be put in writing and signed by you or your attomey, if you retained one to represent you. I am providing you with PS Form 2565, EEO Complaint of Discrimination in the Postal Service, for this purpose. Your complaint must be mailed or delivered to:

NEEOISO - Formal Complaints
U.S. POSTAL SERVICE
P.O. BOX 21979

TAMPA, FL 33622-1979
Your complaint will be deemed timely filed if it is received at this address before the expiration of the 15 -day filing period, or if it bears a postmark that is dated before the expiration of the filing period. In the absence of a legible postmark, it must be received by mail within 5 calendar days of the expiration of the filing period.

An EEO discrimination complaint can be processed only if the complainant alleges he or she has been discriminated against on the basis of race, color, religion, sex (male, female), sex (LGBT), national origin, age (40+), disability, genetic information, or retaliation for participation in protected EEO activity, In addition, courts have ruled the complainant has the burden of presenting evidence which would give rise to an inference of discrimination. A complaint must contain the following information:
(1) Your name, address, position, and level;
- If you change your address, you have a regulatory requirement to immediately report the change to the address below: NEEOISO-EEO Contact Center, U.S. Postal Service, P.O. Box 21979, Tampa, FL 33622-1979
(2) The specific action or matter complained of, the date of occurrence, and the names of the official(s) who took the alleged discriminatory action at issue in this complaint;
(3) The specific type of discrimination alleged, (e.g., race - African American, sex - female);
- If you allege age discrimination, you must have been at least 40 years of age on the date the alleged discriminatory action occurred.
(4) A brief statement of the facts that led you to believe you were discriminated against and the names of similarly situated individuals whom you believe were treated differently than you.
- If you allege a failure to accommodate a disability or your religion, you must explain the accommodation sought and why you sought it.
- If you allege retaliation, you must show a connection between the action about which you are complaining and your participation in protected EEO activity. You also must show when the alleged discriminatory action at issue in this complaint occurred, the management official who took the action was aware that you had previously engaged in protected EEO activity.
(5) The name of the EEO Alternative Dispute Resolution Specialist who provided you with this notice and the date you received this Notice of Right to File.

Privacy Act Statement and Rehabilitation Act Notice
Privacy Act Statement: Your information will be used to adjudicate complaints of alleged discrimination and to evaluate the effectiveness of the EEO program. Collection is authorized by 39 U.S.C. 401, 409, 410, 1001, 1005, and 1206. Providing the information is voluntary, but if not provided, we may not be able to process your request. We may disclose your information as follows: in relevant legal proceedings; to law enforcement when the U.S. Postal Service \({ }^{\circledR}\) (USPS \({ }^{\circledR}\) ) or requesting agency becomes aware of a violation of law; to a congressional office at your request; to entities or individuals under contract with USPS; to entities authorized to perform audits; to labor organizations as required by law; to federal, state, local or foreign government agencies regarding personnel matters; to the Equal Employment Opportunity Commission; and to the Merit Systems Protection Board or Office of Special Counsel. For more information regarding our privacy policies, visit www.usps. com/privacypolicy.
\begin{tabular}{l|l|l|l|l|l|}
\hline Signature of EEO Altemative Dispute Resolution & Date Issued \\
Specialist
\end{tabular}
 PS Form 2579-A, October 2015

Case: 21-1900 Document: 24-2 Page: 331 Date Filed: 07/28/2021

Case 5:19-cv-01879-JLS Document 36-2 Filed 02/14/20 Page 188 of 356


\section*{Case 5:19-cv-01879-JLS Document 36-2 Filed 02/14/20 Page 189 of 356}


\section*{UNITED STATES \\ POSTAL SERVICE}

EEO Alternative Dispute Resolution
Case Number Specialist's (ADRS) Inquiry Peport

\author{
4C-170-0041-19
}

\section*{NOTICE OF RESTRICTED USAGE}

Access to, and usage of, this EEO report is restricted by both the Freedom of Information Act and the Privacy Act to: (1) the complainant and his or her representative, and (2) government officials who must have access to the files to discharge their OFFICIAL duties. The report must be safeguarded. Willful violations of these requirements are subject to criminal penalties [ 5 U.S.C. 552a(i)].


\section*{Discrimination Claim(s):}

The Counselee alleges religious discrimination (required to work on Sundays) when on \(1 / 19 / 2019\), he was forced to resign his position because he was receiving progressive discipline for his refusal to work on Sundays, which violated his religious beliefs.

\section*{Requested Resolution:}

The Counselee's requested resolution is (1) compensatory damages; (2) attorney's fees \& (3) his record be expunged of all adverse actions.

RECEIVED


EEO Alternative Dispute Resolution Specialist＇s Checklist
Please check all that apply．
区 1．I informed counselee of the impartial role of the Alternative Dispute Resolution Specialist in the EEO complaint process，explained the EEO process，and provided counselee with the booklet，What You Need to Know About EEO，an overview of the EEO process in the Postal Service \({ }^{\mathrm{mm}}\) ．
2．I notified counselee of his／her right to be accompanied，represented，and advised by a representative of his／her choice at any stage in the complaint process．If counselee elected representation，I obtained the following information：

Representative＇s Name：David W．Crossett

Title：Attorney
Telephone Number： （610）926－7875

Fax Number： \(\qquad\) Email Address：david＠cornerstonelaw．us
Mailing Address： \begin{tabular}{l} 
Cornerstone Law Firm \\
8500 Allentown Pike Ste． 3 \\
Blanton，PA 19510－9101
\end{tabular}

3．Iadvised counselee of his／her right to remain anonymous during pre－complaint counseling and he／she DID \(\times\)／DID NOT \(\qquad\) waive anonymity．

凹 4．l explained the Privacy Act Statement．Counselee signed a copy of the notice before the Interview．5．If a mixed case，I informed counselee of the mixed case election procedures in 29 CFR \(\S 1614.302\) ．
6．If age discrimination was alleged， 1 informed counselee of the alternate procedures available for pursuing age claims，as outlined in 29 CFR \(\$ 1614.201\) ．7．If a sex based claim of wage discrimination was alleged under Equal Pay Act（EPA），I advised counselee of his／her right to bypass the administrative procedure and file a civil action，as outlined in 29 CFR 51614.408.8．If discrimination based on disability was alleged，I informed counselee of his／her requirement to submit documentation of his／her disability．Documentation HAS \(\qquad\) ／HAS NOT \(\qquad\) been submitted．9．If counselee presented his／herself as an agent of a class，I explained the class complaint procedures and the class agent＇s responsibilities，as outlined in 29 CFR \(\$ 1614.204\) ．

区 10．I informed counselee of his／her requirement to immediately notify the NEEOISO－EEO Contact Center and the EEOC if his／her mailing address，or their representative＇s mailing address，changes．11．I explained that I will not be the one who will make the decision on the acceptability of the counselee＇s claim（s）； but，there is a possibility that，for the reason（s）I have briefly restated below，the claim（s）will be dismissed in accordance with 29 CFR 1614．107．

Brief Summary of inquiry (if applicable)
The Counselee states he initially made a request not to work on Sundays in 2017. The Counselee states his faith prevents him from working at all on Sundays. He states he has refused to work on Sundays and has received progressive discipline over the last 2 years. The Counselee states he was forced to resign because the next step disciplinary action would have been a notice of removal.

On 4/10/2019 and inquiry was conducted with Postmaster Brian Hess regarding the Counselee's claim. Mr. Hess stated he made several attempts over the last 2 years to accommodate the Counselee. Mr. Hess stated he offered to solicit volunteers on Sunday, rotate the employees alphabetically, asked if other rural carrier associates the office would take his place \& offered flexible start times allowing him to come in after church. He stated the Counselee refused these accommodations, refusing to work on Sundays at all. Mr. Hess allowing him to not work on Sunday was unfair to the other rural carrier associates who are required to do so. Mr. Hess further stated the Counselee voluntarily resigned from the agency, but removal would have been the next step if he continued not showing up to work on Sundays.

REDRESS (Alternative Dispute Resolution Specialist completes this section if counselee participated in ADR.)


In that the matter could not be resolved during counseling, on 4/9/2019PS Form 2579-A and PS Form 2565 were mailed to the Counselee via signature confirmation 23171640000000918856 . USPS tracking indicated that the NRTF was delivered on 4/15/2019.
See Continuation Page7 \(\square\) Yes \(\triangle\) No
\begin{tabular}{|c|c|c|}
\hline Office Address of Alternative Dispute Resolution Specialist (No, Street, City, State, and ZIP+4) & \multicolumn{2}{|l|}{Office Address of Manager, EEO Compliance \& Appeals (No., Street, CIty, State, and ZIP+4)} \\
\hline \begin{tabular}{l}
EEO Field Operation, Region 4 \\
PO Box 31411 \\
Louisville, KY 40231-9411
\end{tabular} & EEO Field Operations 8 Griffin Road North, Suite 101 Windsor, CT 06095-1579 & \\
\hline Specialist's Office Teiephone Number (502) 454-1737 & Specialist's Office Hours
7:00 a.m. - 4:00 p.m. & \\
\hline  & \begin{tabular}{l}
Typed Name of EEO Alternative Dispute Resolution Speclalist \\
Geta J. Gordon
\end{tabular} & \begin{tabular}{l}
Date \\
May 08, 2019
\end{tabular} \\
\hline
\end{tabular}

\title{
UNITED STATES POSTAL SERVICE EQUAL EMPLOYMENT OPPORTUNITY IN THE MATTER OF:
}
\begin{tabular}{l} 
Gerald Groff \\
\hline New providence, PA 17560-9680 \\
Complainant, \\
\(\quad v\) \\
MEGAN J BRENNAN \\
Postmaster General \\
United States Postal Service \\
Eastern Area \\
Agency.
\end{tabular}

Delivery Confirmation Complainant: 9114901496451853174383

Delivery Confirmation Representative: 9114901496451853174390

Agency Case Number: 4C-170-0030-18

Date Formal Filed: April 27, 2018

\section*{ACCEPTANCE FOR INVESTIGATION}

The agency acknowledges the receipt of the formal complaint of discrimination referenced above. Enclosed is PS Form 2570, EEO Dispute Resolution Specialist's Inquiry Report. Your complaint has been accepted for investigation. The scope of the investigation will include the following issue(s):

Specific Issue Alleged: You alleged discrimination based on Religion (Evangelical Christian) when:
1) On January 16, 2018, you were issued a 7 Day Suspension; and
2) On or around March 6, 2018, you requested a religious accommodation and have not received a response.

NOTE: If your complaint involves an allegation of age discrimination, the Postal Service is required by the Age Discrimination in Employment Act of 1967, as amended, to advise you that you may consult with an attorney should you desire to do so before signing any agreement resolving your complaint of age discrimination.

If you do not agree with the accepted issue(s) as defined above, you must provide a written response specifying the nature of your disagreement within seven (7) calendar days of the date of your receipt of this letter. Your response must be addressed to the EEO Services Analyst who signed this letter at NEEOISO, P. O. Box 21979, Tampa, FL 33622-1979. You are reminded that any notification of disagreement with the defined
accepted issues is not an opportunity or forum to raise additional, unrelated allegations of discrimination. Additional unrelated issues must be pursued through the established EEO procedures described in Poster 72 which is displayed on the employee bulletin boards at your local installation.

Your case will be assigned for investigation. Please be prepared to go forward with your case and provide an affidavit when the Investigator contacts you in the near future.

The investigation of the accepted issues will be completed within 180 calendar days of the date of your filing of this complaint, except that you and the Postal Service may voluntarily agree, in writing, to extend the time period up to an additional 90 calendar days. Should you seek to amend the complaint, an amendment, if accepted, will extend the time for processing an additional 180 days from the date of the amendment with the total allowable time for processing the complaint and all amendments no more than 360 days.

If you have a grievance pending on the same issue(s) as those addressed in your complaint of discrimination, the agency may, at its discretion, defer the processing of this complaint until the grievance procedure has run its course and there has been a final resolution of the grievance. When an investigation is deferred pending the outcome of the grievance process, the 180-day time period for processing the complaint is stopped temporarily and does not restart until the grievance is resolved. If your complaint is deferred, you will be notified in writing of the options which may be available to you as a result.

When the investigation is completed, you will receive a copy of the investigative report and you will be notified of your right to request a hearing before an Equal Employment Opportunity Commission (EEOC) Administrative Judge or of your right to a final decision by the agency head or designee without a hearing. You may request a final agency decision without a hearing, at the appropriate time, by addressing your request to NEEOISO-FADS, P.O. Box 21979, Tampa, FL 33622-1979.

You may request a hearing before an EEOC Administrative Judge by notifying the District Director of the EEOC in writing at the following address:

Hearings Unit
EEOC Philadelphia District Office
801 Market Street Suite 1300
Philadelphia, PA 19107-3127
You must make your hearing request within 30 calendar days of the date of your receipt of the investigative report and you must provide the NEEOISO-Hearings, P.O. Box 21979, Tampa, FL 33622-1979 with a copy of that hearing request. If you do not
receive your investigative report and notification concerning your appeal rights within 180 calendar days from the date on which you filed your formal complaint, you may request a hearing by writing directly to the EEOC District Office noted above, with a copy to the NEEOISO-Hearings, P.O. Box 21979, Tampa, FL 33622-1979.

If you are dissatisfied with the Postal Service's final agency decision where there has been no hearing, or with the Postal Service's final action on the decision of an Administrative Judge following a hearing, you have certain appeals rights. You may appeal to the Office of Federal Operations, Equal Employment Opportunity Commission (EEOC), at the address shown below, within 30 calendar days of the date of your receipt of the final agency decision or you may file a civil action in the appropriate U. S. District Court within 90 calendar days of your receipt of the decision.

You may also appeal a final action by the Postal Service implementing a decision of an Administrative Judge following a hearing. Such an appeal must be filed within 30 calendar days of the date of your receipt of that final action or you may file a civil action in an appropriate U. S. District Court within 90 calendar days of the date of your receipt of the final action. Finally, you may respond to an appeal by the Postal Service in connection with its final action not to implement a decision of an Administrative Judge following a hearing or you may file a civil action in an appropriate U. S. District Court within 90 calendar days of the date of your receipt of the final action and appeal.

Any appeal to the EEOC should be addressed to the Office of Federal Operations, P.O. Box 77960, Washington, D.C. 20013-8960. Along with your appeal, you must submit proof to the EEOC that copies of the appeal and any supporting documentation were also submitted to NEEOISO-FADS, P.O. Box 21979, Tampa, FL 33622-1979.

After 180 calendar days from the date of filing your formal complaint, you may file a civil action in an appropriate U. S. District Court if the Postal Service has not issued a final decision on your complaint or if no final action has been taken on a decision by an Administrative Judge.

If you have appealed to the Office of Federal Operations, EEOC, you may file a civil action in an appropriate U. S. District Court within 90 calendar days after your receipt of the Office of Federal Operation's decision. If you do not receive a decision on your appeal within 180 calendar days from the date of your appeal, you may file a civil action.

\title{
Enclosures: PS Form 2570, EEO Dispute Resolution Specialist's (DRS) Inquiry Report Report of Investigative File Media Selection Form
}

Cc: David Crossett Esq, 8500 Allentown Pike Ste 3, Blandon, PA 19510-9460

Case 5:19-cv-01879-JLS Document 36-2 Filed 02/14/20 Page 197 of 356

\title{
UNITED STATES POSTAL SERVICE EQUAL EMPLOYMENT OPPORTUNITY IN THE MATTER OF:
}

GERALD GROFF
New Providence, PA 17560-9680
Complainant,
v.

MEGAN J BRENNAN
Postmaster General United States Postal Service Eastern Area
Agency.

USPS Tracking No. Complainant: 9114901496451886072601
USPS Tracking No. Representative: 9114901496451886072595

Agency Case No. 4C-170-0030-18

Date Filed Formal: April 27, 2018

\section*{ACKNOWLEDGEMENT OF AMENDMENT TO COMPLAINT}

The agency acknowledges the receipt of your request to amend your complaint. Title 29 C.F.R. \(\S 1614.106\) (d), permits the amendment of a pending EEO complaint to add claims that are like or related to those claims raised in the pending complaint. There is no requirement that the complainant seek or receive counseling on these new claims. The additional matters raised in your request are considered like or related to the matters raised in your formal complaint filed on April 27, 2018. Therefore your complaint is hereby amended.

Specific Amended Issue: You allege discrimination based on Religion (Evangelical Christian) when:
3. On October 9, 2018, you were issued a Notice of 14-Day Paper Suspension dated October 5, 2018.

The issues now accepted for investigation include only the following:
Specific Issue(s): You allege discrimination based on Religion (Evangelical Christian) when:
1. Oń January 16, 2018, you were issued a 7 Day Suspension;
2. On or around March 6, 2018, you requested a religious accommodation and have not received a response, and

Case 5:19-cv-01879-JLS Document 36-2 Filed 02/14/20 Page 198 of 356
3. On October 9, 2018, you were issued a Notice of 14-Day Paper Suspension dated October 5, 2018.

NOTE: If your complaint involves an allegation of age discrimination, the Postal Service is required by the Age Discrimination in Employment Act of 1967, as amended, to advise you that you may consult with an attorney should you desire to do so before signing any agreement resolving your complaint of age discrimination.

If you do not agree with the defined accepted issue(s), you must provide a written response specifying the nature of your disagreement within seven (7) calendar days of receipt of this letter to the EEO Services Analyst at the address below. You are reminded that any notification of disagreement with the defined accepted issues is not an opportunity or forum to raise additional, unrelated allegations of discrimination. Additional unrelated issues must be pursued through established procedures with your local EEO Office.

Please be prepared to go forward with your case and provide an affidavit when the Investigator contacts you in the near future.

The investigation must now be completed within the earlier of 180 days of this amendment or 360 days from the date the original complaint was filed, except that you may request a hearing on the original complaint and amendments to it at any time after 180 days from the date the original complaint was filed. You may request a hearing by sending your request, in writing, within the applicable time period, to:

\author{
Hearings Unit \\ EEOC Philadelphia District Office \\ 801 Market Street Suite 1300 \\ Philadelphia, PA 19107-3127
}

If you have a grievance pending on the same issue(s) as those addressed in your complaint of discrimination, the agency may, at its discretion, defer the processing of this complaint until the grievance procedure has run its course and there has been a final resolution of the grievance. When an investigation is deferred, pending the outcome of the grievance process, the 180 -day time period for processing the complaint is stopped temporarily, and does not restart until the grievance is resolved. If your complaint is deferred, you will be notified, in writing, of the options which may be available to you as a result.

When the investigation is completed, you will receive a copy of the investigative report and you will be notified of your right to request a hearing before an Equal Employment Opportunity Commission (EEOC) Administrative Judge or of your right to a final decision by the agency head or designee without a hearing. Please note: your investigative report will be sent to you via priority mail, signature confirmation and will require you to sign for receipt. You may request a final agency decision without a hearing, at the appropriate time, by addressing your request to NEEOISO-FADS, P.O. Box 21979, Tampa, FL 33622-1979.

You may request a hearing by an EEOC Administrative Judge by notifying, in writing, the District Director of the EEOC at the address stated above.

You must make your hearing request within 30 calendar days of your receipt of the investigative report and you must provide the National EEO Investigative Services Hearings, P.O. Box 21979, Tampa, FL 33622-1979 with a copy of that hearing request. If you do not receive your investigative report and notification concerning your appeal rights within 180 calendar days from the date on which you filed your formal complaint, you may request a hearing by writing directly to the EEOC District Office shown above, with a copy to the National EEO Investigative Services Office - Hearings, P.O. Box 21979, Tampa, FL 33622-1979, at any time up to 30 calendar days after receipt of the investigative report.

If you are dissatisfied with the Postal Service's final agency decision where there has been no hearing, or with the Postal Service's final action on the decision of an Administrative Judge following a hearing, you have certain appeals rights. You may appeal to the Office of Federal Operations, Equal Employment Opportunity Commission (EEOC), at the address shown below, within 30 calendar days of the date of your receipt of the final agency decision or you may file a civil action in the appropriate U. S. District Court within 90 calendar days of your receipt of the decision.

Any appeal to the EEOC should be addressed to the Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 77960, Washington, D.C. 20013-8960. Along with your appeal, you must submit proof to the EEOC that a copy of the appeal and any supporting documentation were also submitted to the Manager, National EEO Investigative Services Office, P. O. Box 21979, Tampa, FL 33622-1979.

After 180 calendar days from the date of filing your formal complaint, you may file a civil action in an appropriate U. S. District Court if the Postal Service has not issued a final decision on your complaint or if no final action has been taken on a decision by an Administrative Judge.

If you decide to appeal to the Office of Federal Operations, EEOC, you may file a civil action in an appropriate \(U\). S. District Court within 90 calendar days after your receipt of the Office of Federal Operation's decision. If you do not receive a decision on your appeal within 180 calendar days from the date of your appeal, you may file a civil action.

October 15, 2018
Date

\title{
UNITED STATES POSTAL SERVICE EQUAL EMPLOYMENT OPPORTUNITY IN THE MATTER OF:
}

\author{
Gerald Groff \\ Jeffersonville, IN 47130-9678 \\ Complainant, \\ v. \\ Megan J. Brennan \\ Postmaster General United States Postal Service Eastern Area Agency.
}

USPS Tracking \# Complainant: 9114901496451486375560

USPS Tracking \# Representative: 9114901496451486375577

Agency Case Number: 4C-170-0051-17

Date Formal Filed: October 3, 2017

\section*{ACCEPTANCE FOR INVESTIGATION}

The agency acknowledges the receipt of the formal complaint of discrimination referenced above. Enclosed is PS Form 2570, EEO Dispute Resolution Specialist's Inquiry Report. Your complaint has been accepted for investigation. The scope of the investigation will include the following issue(s):

Specific Issue Alleged: You alleged discrimination based on Religion (Evangelical Christian) when:
1) Since a date to be specified around April 2017 and continuing, you have not been accommodated per your religious beliefs; and
2) On June 12, 2017, you were issued a Letter of Warning (LOW).

NOTE: If your complaint involves an allegation of age discrimination, the Postal Service is required by the Age Discrimination in Employment Act of 1967, as amended, to advise you that you may consult with an attorney should you desire to do so before signing any agreement resolving your complaint of age discrimination.

If you do not agree with the accepted issue(s) as defined above, you must provide a written response specifying the nature of your disagreement within seven (7) calendar days of the date of your receipt of this letter. Your response must be addressed to the EEO Services Analyst who signed this letter at NEEOISO, P. O. Box 21979, Tampa, FL 33622-1979. You are reminded that any notification of disagreement with the defined
accepted issues is not an opportunity or forum to raise additional, unrelated allegations of discrimination. Additional unrelated issues must be pursued through the established EEO procedures described in Poster 72 which is displayed on the employee bulletin boards at your local installation.

Your case will be assigned for investigation. Please be prepared to go forward with your case and provide an affidavit when the Investigator contacts you in the near future.

The investigation of the accepted issues will be completed within 180 calendar days of the date of your filing of this complaint, except that you and the Postal Service may voluntarily agree, in writing, to extend the time period up to an additional 90 calendar days. Should you seek to amend the complaint, an amendment, if accepted, will extend the time for processing an additional 180 days from the date of the amendment with the total allowable time for processing the complaint and all amendments no more than 360 days.

If you have a grievance pending on the same issue(s) as those addressed in your complaint of discrimination, the agency may, at its discretion, defer the processing of this complaint until the grievance procedure has run its course and there has been a final resolution of the grievance. When an investigation is deferred pending the outcome of the grievance process, the 180 -day time period for processing the complaint is stopped temporarily and does not restart until the grievance is resolved. If your complaint is deferred, you will be notified in writing of the options which may be available to you as a result.

When the investigation is completed, you will receive a copy of the investigative report and you will be notified of your right to request a hearing before an Equal Employment Opportunity Commission (EEOC) Administrative Judge or of your right to a final decision by the agency head or designee without a hearing. You may request a final agency decision without a hearing, at the appropriate time, by addressing your request to NEEOISO-FADS, P.O. Box 21979, Tampa, FL 33622-1979.

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EEOC Philadelphia District Office
801 Market Street Suite 1300
Philadelphia, PA 19107-3127
You must make your hearing request within 30 calendar days of the date of your receipt of the investigative report and you must provide the NEEOISO-Hearings, P.O. Box 21979, Tampa, FL 33622-1979 with a copy of that hearing request. If you do.not
receive your investigative report and notification concerning your appeal rights within 180 calendar days from the date on which you filed your formal complaint, you may request a hearing by writing directly to the EEOC District Office noted above, with a copy to the NEEOISO-Hearings, P.O. Box 21979, Tampa, FL 33622-1979.

If you are dissatisfied with the Postal Service's final agency decision where there has been no hearing, or with the Postal Service's final action on the decision of an Administrative Judge following a hearing, you have certain appeals rights. You may appeal to the Office of Federal Operations, Equal Employment Opportunity Commission (EEOC), at the address shown below, within 30 calendar days of the date of your receipt of the final agency decision or you may file a civil action in the appropriate U. S. District Court within 90 calendar days of your receipt of the decision.

You may also appeal a final action by the Postal Service implementing a decision of an Administrative Judge following a hearing. Such an appeal must be filed within 30 calendar days of the date of your receipt of that final action or you may file a civil action in an appropriate U. S. District Court within 90 calendar days of the date of your receipt of the final action. Finally, you may respond to an appeal by the Postal Service in connection with its final action not to implement a decision of an Administrative Judge following a hearing or you may file a civil action in an appropriate U.S. District Court within 90 calendar days of the date of your receipt of the final action and appeal.

Any appeal to the EEOC should be addressed to the Office of Federal Operations, P.O. Box 77960, Washington, D.C. 20013-8960. Along with your appeal, you must submit proof to the EEOC that copies of the appeal and any supporting documentation were also submitted to NEEOISO-FADS, P.O. Box 21979, Tampa, FL 33622-1979.

After 180 calendar days from the date of filing your formal complaint, you may file a civil action in an appropriate U. S. District Court if the Postal Service has not issued a final decision on your complaint or if no final action has been taken on a decision by an Administrative Judge.

If you have appealed to the Office of Federal Operations, EEOC, you may file a civil action in an appropriate U. S. District Court within 90 calendar days after your receipt of the Office of Federal Operation's decision. If you do not receive a decision on your appeal within 180 calendar days from the date of your appeal, you may file a civil action.

Gil Grion
EEO Services Analyst

October 23, 2017
DATE

Enclosures: PS Form 2570, EEO Dispute Resolution Specialist's (DRS) Inquiry Report Report of Investigative File Media Selection Form

Cc: David Crossett, 8500 Allentown Pike Ste 3, Blandon, PA 19510-9460

\title{
* complaints
}

Connect Portal
MicroPact icomplaints System
Session will expire in 30 minutes
Thu May 16 14:23:32 CDT 2019
[ Create a PDF document ]

\section*{Case Details for 4C-170-0030-18 / GERALD E GROFF}

\section*{I. General Information}
\begin{tabular}{|l|l|}
\hline Complaint Type & Formal/Mixed/Class Filed Date \\
\hline Formal & \(04 / 27 / 2018\) \\
\hline Subject & \\
\hline \begin{tabular}{l} 
Audit \(5 / 1 / 18\) MDG Upon review case appears accurate. \\
Converted EEO Contact Case PRE-012072-2018 to Informal. \\
FORE.
\end{tabular} \\
\hline
\end{tabular}
\begin{tabular}{|l|l|}
\hline Case Manager & Assignment Date \\
\hline Susan Flanagan MDR & \(02 / 06 / 2018\) \\
\hline Michelle Davis & \(05 / 01 / 2018\) \\
\hline Counselor & Assignment Date \\
\hline Dena Williams & \(02 / 06 / 2018\) \\
\hline Jane Wixson ADRS & \(02 / 08 / 2018\) \\
\hline Maria Garcia-Artz & \(05 / 01 / 2018\) \\
\hline
\end{tabular}

Finance Number

\section*{413736}

Office Information
4C170:CENTRAL PA CS DISTRICT

\section*{II. Complainants}

Restricted Information
\begin{tabular}{|l|l|l|l|l|l|}
\hline Name & SSN & EIN & Email & \begin{tabular}{l} 
Series/Pay Plan- \\
Grade
\end{tabular} \\
\hline \begin{tabular}{l} 
GERALD E \\
GROFF
\end{tabular} & & & & & /B-05 \\
\cline { 2 - 5 } & & & & \\
\hline
\end{tabular}

Home Address
NEW PROVIDENCE PA 17560-9680
Phone: \(\quad\) FAX: n/a Cell: n/a

CONFIDENTIAL
https://eeo.usps.gov/iComplaints/jsp/home/search/details.jsp?complaintid=4C-170-0030-1... 5/16/20 USPS00586

\section*{Work Address}

HOLTWOOD PA 17532-9998
Phone: \(n / a\) FAX: \(n / a\) Cell: \(n / a\)

\section*{III. Complaint Contacts}

\section*{Complaint Contacts}
\begin{tabular}{|c|c|c|c|c|}
\hline Complaint Type & Contact Type & Name & Email & Address \\
\hline Informal & Complainant Representative & David Crossett & david@cornerstonelaw.us & Work Address 8500 Allentown Pike Suite 3 Blandon PA, 19510 Phone: 610-3100404 \\
\hline Informal & Management Official & Brian Hess & brian.m.hess@usps.gov & \begin{tabular}{l}
Work Address PM Holtwood PO 55 Drytown Rd. Holtwood PA, 17532 \\
Phone: 717-2842850
\end{tabular} \\
\hline Formal & Contract Investigator & Gregory Jones & & Home Address 3012 Evans St Allentown PA, 18103-7066 \\
\hline
\end{tabular}

\section*{IV. Pre-remand Claims}

There are no pre-remand claims for this case.

\section*{V. Claims}

Accepted
\begin{tabular}{|l|l|l|l|}
\hline Claim & Incident Date & \multicolumn{2}{|l|}{ Comments } \\
\hline Bases & \begin{tabular}{l} 
Discrimination \\
Found By AJ
\end{tabular} & \begin{tabular}{l} 
Discrimination \\
Found By Agency
\end{tabular} & \multicolumn{1}{|l|}{\begin{tabular}{l} 
Discrimination \\
Found By OFO
\end{tabular}} \\
\hline \begin{tabular}{l} 
Disciplinary Action \\
Suspension - 7 Day
\end{tabular} & \(01 / 02 / 2018\) & \begin{tabular}{l} 
1) On January 16, 2018, you were issued a 7 \\
Day Suspension; and
\end{tabular} \\
\hline Religion: Christian & Not Specified & No & Not Specified \\
\hline \begin{tabular}{l} 
Disciplinary Action \\
Suspension -14 Day
\end{tabular} & \(10 / 09 / 2018\) & \begin{tabular}{l} 
3. On October 9, 2018, you were issued a Notice \\
of 14-Day Paper Suspension dated October 5, \\
2018.
\end{tabular} \\
\hline Religion: Christian & Not Specified & No & Not Specified \\
\hline \begin{tabular}{l} 
Religious \\
Accommodation
\end{tabular} & 03/06/2018 & \begin{tabular}{l} 
2) On or around March 6, 2018, you requested a \\
religious accommodation and have not received \\
a response.
\end{tabular} \\
\hline Religion: Christian & Not Specified & No & Not Specified \\
\hline
\end{tabular}

\section*{VI. Statutes}

Title VII
VII. Events

Sort Events by Date
\begin{tabular}{|c|c|c|c|c|c|}
\hline Start & Activity & Updated By & Claim & Comment & 462/Class/Mixed Mapping \\
\hline \multicolumn{6}{|l|}{Event Type: Initial EEO Contact} \\
\hline 01/23/2018 & Initial Contact & Dena Williams & & Auto generated & \\
\hline 01/23/2018 & Intake Package Provided (2564-A \& Pub 133) & Dena Williams & & & \\
\hline 02/06/2018 & 2564A or Equivalent Received by EEO Office & Dena Williams & & & \\
\hline \multicolumn{6}{|l|}{Event Type: PreComplaint Counseling} \\
\hline 01/23/2018 & Initial Contact & Dena Williams & & Autogenerated & Informal Start \\
\hline 02/03/2018 & 60-Day Extension & Jane Wixson ADRS & & Postmark & Extension Granted \\
\hline 02/08/2018 & CMS Counselor Assignment & Susan Flanagan MDR & & Reassigned to Jane Wixson on 2/08/18. & N/A \\
\hline 02/13/2018 & Initial Interview with Counselee (Put a check) & Jane Wixson ADRS & & Initial interview took place with attorney rep only. & N/A \\
\hline \multicolumn{6}{|l|}{Event Type: REDRESS} \\
\hline 02/13/2018 & Mediation Offered & Jane Wixson ADRS & & Reviewed during interview with attorney rep. & ADR Offered \\
\hline 02/13/2018 & Mediation - Not Elected & Jane Wixson ADRS & & & Rejected By Individual \\
\hline \multicolumn{6}{|l|}{Event Type: Informal Closure} \\
\hline 04/19/2018 & Notice of Right to File & Jane Wixson ADRS & & \begin{tabular}{|l|}
\hline Final letter \\
sent to \\
Attorney rep \\
by priority mail \\
signature \\
confirmation \\
tracking \(\#\) \\
95108152
\end{tabular} & Notice of Right to File \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|c|}
\hline Start & Activity & Updated By & Claim & Comment & 462/Class/Mixed Mapping \\
\hline & & & & \[
\begin{array}{|l|}
55568109 \\
364001 .
\end{array}
\] & \\
\hline \multicolumn{6}{|l|}{Event Type: Formal Processing} \\
\hline 04/27/2018 & Formal Filed (2565 or equivalent) & Maria GarciaArtz & & \begin{tabular}{l}
Autogenerated \\
- Converted to Formal
\end{tabular} & Formal Start \\
\hline 05/02/2018 & DRS Report Requested & Maria GarciaArtz & & & N/A \\
\hline 05/14/2018 & DRS Report Received & Michelle Davis & & & N/A \\
\hline 05/16/2018 & Accepted/Written Notification (Put a check mark) & Michelle Davis & \begin{tabular}{l}
Disciplinary Action Suspension-7 Day (01/02/2018), \\
Religious Accommodation (03/06/2018)
\end{tabular} & & Claims Accepted \\
\hline 10/15/2018 & Amendment Requested & Laura Johnson & & & N/A \\
\hline 10/15/2018 & Amendment Accepted (Put a check mark) & Laura Johnson & Disciplinary Action Suspension 14 Day (10/09/2018) & & Amendment \\
\hline 12/30/2018 & Agency Requested FAD & Admin Account & & Event Inputted via MPE Script & Agency Request for FAD \\
\hline \multicolumn{6}{|l|}{Event Type: NEEOISO} \\
\hline 05/16/2018 & Received for Investigation & Michelle Davis & & & Investigator Assignment \\
\hline 05/17/2018 & Assign to Contract Investigator & \begin{tabular}{l}
Stephanie \\
Thompson
\end{tabular} & & & N/A \\
\hline 11/20/2018 & ROI - Transmit to Complainant & \begin{tabular}{l}
Stephanie \\
Thompson
\end{tabular} & & & Investigation End \\
\hline \multicolumn{6}{|l|}{Event Type: Formal Closure} \\
\hline 01/28/2019 & Final Agency Decision (Merit) & Shalanda Bryant & & & FAD - Merit \\
\hline \multicolumn{6}{|l|}{Event Type: Formal Appeal} \\
\hline 03/06/2019 & Date Complainant Appeal Received & Shalanda Bryant & & & N/A \\
\hline 03/18/2019 & Notified of Appeal by OFO & Dena Williams & & 2019002200 & N/A \\
\hline
\end{tabular}
\begin{tabular}{|l|l|l|l|l|l|}
\hline Start & Activity & Updated By & Claim & Comment & \begin{tabular}{l} 
462/Class/Mixed \\
Mapping
\end{tabular} \\
\hline 04/03/2019 & \begin{tabular}{l} 
Response and \\
Submission of \\
Case File to \\
OFO
\end{tabular} & \begin{tabular}{l} 
Michelle \\
Davis
\end{tabular} & & via FedSEP & N/A \\
\hline
\end{tabular}

\section*{VIlla. Monetary Corrective Actions}

There are no monetary corrective actions for this case.
VIIIb. Non-monetary Corrective Actions
There are no non-monetary corrective actions for this case.
IX. Letters

There are no Letters for this case.
X. Fees
\begin{tabular}{|l|r|l|}
\hline Description & Fee & Complaint Type \\
\hline FAD Writer & \(\$ 450.00\) & Formal \\
\hline Investigation & \(\$ 1,700.00\) & Formal \\
\hline
\end{tabular}
XI. Documents
\begin{tabular}{|l|l|l|}
\hline Date & Filename & Description \\
\hline Document Type: The Complainant & \\
\hline 02/06/2018 & PRE-012072-2018 Groff G.pdf & PRE-012072-2018 Groff G \\
\hline
\end{tabular}

\section*{XII. Narrative}

No complaint narrative currently exists for this case.

MicroPact icomplaints System
[ Create a PDF document ]
Case Details for 4C-170-0051-17 / GERALD E GROFF

\section*{I. General Information}
\begin{tabular}{|l|l|}
\hline Complaint Type & Formal/Mixed/Class Filed Date \\
\hline Formal & \(10 / 03 / 2017\) \\
\hline Subject & \\
\hline \begin{tabular}{l} 
Audit 10/06/17 [ME] Upon review, case appears accurate. \\
Converted EEO Contact Case PRE-025956-2017 to Informal. \\
FORE.
\end{tabular} \\
\hline
\end{tabular}
\begin{tabular}{|l|l|}
\hline Case Manager & Assignment Date \\
\hline Susan Flanagan MDR & \(07 / 11 / 2017\) \\
\hline Kelly Hulett & \(10 / 06 / 2017\) \\
\hline Counselor & Assignment Date \\
\hline Kelly Hulett & \(07 / 11 / 2017\) \\
\hline Jane Wixson ADRS & \(07 / 18 / 2017\) \\
\hline Manuel Espinoza & \(10 / 06 / 2017\) \\
\hline
\end{tabular}

\section*{Finance Number}

414413

Office Information
4C170:CENTRAL PA CS DISTRICT

\section*{II. Complainants}

Restricted Information
\begin{tabular}{|l|l|l|l|l|}
\hline Name & SSN & EIN & Email & \begin{tabular}{l} 
Series/Pay Plan- \\
Grade
\end{tabular} \\
\hline \begin{tabular}{l} 
GERALD E \\
GROFF
\end{tabular} & & & & \\
\hline
\end{tabular}

Home Address
NEW PROVIDENCE PA 17560-9680
Phone: FAX: n/a Cell: n/a

CONFIDENTIAL
https://eeo.usps.gov/iComplaints/jsp/home/search/details.jsp?complaintid=4C-170-0051-1... 5/16/20 USPS00591

\section*{Work Address}

HOLTWOOD PA 17532-9998
Phone: n/a FAX: n/a Cell: n/a
III. Complaint Contacts

Complaint Contacts
\begin{tabular}{|c|c|c|c|c|}
\hline Complaint Type & Contact Type & Name & Email & Address \\
\hline Informal & Management Official & Mr. Douglas C French & douglas.c.french@usps.gov & \begin{tabular}{l}
Work Address Postmaster 1425 Crooked Hill Road Harrisburg PA, 17107 \\
Phone: 717- \\
257-2102 Cell: \\
717-295-1081
\end{tabular} \\
\hline Informal & Management Official & Mr. Aaron S. Zehring & Aaron.S.Zehring@usps.gov & \begin{tabular}{l}
Work Address Lancaster PA Aneex 1301 Marshall Ave Lancaster PA, 17601 \\
Phone: (717) 257-2350
\end{tabular} \\
\hline Formal & Contract Investigator & Patricia St John & & \\
\hline Informal & Complainant Representative & David Crossett & david@cornerstonelaw.us & \begin{tabular}{l}
Work Address 8500 Allentown Pike Suite 3 Blandon PA, 19510 \\
Phone: 610-310-0404
\end{tabular} \\
\hline Informal & Management Official & Diane Evans & diane.m.evans@usps.gov & \begin{tabular}{l}
Work Address \\
Lancaster \\
Carrier Annex \\
1301 Marshall \\
Ave. \\
Lancaster PA, 17601 \\
Phone: 717- \\
290-7764
\end{tabular} \\
\hline
\end{tabular}

\section*{IV. Pre-remand Claims}

There are no pre-remand claims for this case.

\section*{V. Claims}

Accepted
\begin{tabular}{|l|l|l|l|}
\hline Claim & Incident Date & \multicolumn{2}{|l|}{ Comments } \\
\hline Bases & \begin{tabular}{l} 
Discrimination \\
Found By AJ
\end{tabular} & \begin{tabular}{l} 
Discrimination \\
Found By Agency
\end{tabular} & \multicolumn{1}{|l|}{\begin{tabular}{l} 
Discrimination \\
Found By OFO
\end{tabular}} \\
\hline \begin{tabular}{l} 
Disciplinary Action \\
Reprimand (Letter of \\
Warning)
\end{tabular} & \(06 / 12 / 2017\) & \begin{tabular}{l} 
2) On June 12, 2017, you were issued a Letter of \\
Warning (LOW).
\end{tabular} \\
\hline Religion: Christian & Not Specified & No & Not Specified \\
\hline \begin{tabular}{l} 
Religious \\
Accommodation
\end{tabular} & \(04 / 01 / 2017\) & \begin{tabular}{l} 
1) Since a date to be specified around April 2017 \\
and continuing, you have not been \\
accommodated per your religious beliefs
\end{tabular} \\
\hline Religion: Christian & Not Specified & No & Not Specified \\
\hline
\end{tabular}

\section*{VI. Statutes}

Title VII

\section*{VII. Events}

Sort Events by Date
\begin{tabular}{|c|c|c|c|c|c|}
\hline Start & Activity & Updated By & Claim & Comment & 462/Class/Mixed Mapping \\
\hline \multicolumn{6}{|l|}{Event Type: Initial EEO Contact} \\
\hline 06/21/2017 & Initial Contact & Kelly Hulett & & Auto generated & \\
\hline 06/22/2017 & Intake Package Provided (2564-A \& Pub 133) & Kelly Hulett & & & \\
\hline 07/11/2017 & 2564A or Equivalent Received by EEO Office & Keily Hulett & & & \\
\hline \multicolumn{6}{|l|}{Event Type: PreComplaint Counseling} \\
\hline 06/21/2017 & Initial Contact & Kelly Hulett & & Autogenerated & Informal Start \\
\hline 07/18/2017 & CMS Counselor Assignment & \begin{tabular}{l}
Susan \\
Flanagan MDR
\end{tabular} & & Reassigned to Jane Wixson on \(7 / 18 / 17\). & N/A \\
\hline 08/14/2017 & Initial Interview with Counselee (Put a check ) & Jane Wixson ADRS & & & N/A \\
\hline \multicolumn{6}{|l|}{Event Type: REDRESS} \\
\hline 06/30/2017 & Mediation - Offered & Jane Wixson ADRS & & Postmark & ADR Offered \\
\hline 06/30/2017 & Mediation - Elected & Jane Wixson ADRS & & Postmark & ADR Accepted (Extends 60 days) \\
\hline
\end{tabular}
\begin{tabular}{|c|c|c|c|c|c|}
\hline Start & Activity & Updated By & Claim & Comment & 462/Class/Mixed Mapping \\
\hline 09/13/2017 & Mediation - CP Cancelled/Rejected (After Electing) & Jane Wixson
ADRS & & Declined mediation. & \[
\begin{array}{|l}
\text { No Resolution } \\
\text { (ADR End) }
\end{array}
\] \\
\hline \multicolumn{6}{|l|}{Event Type: Informal Closure} \\
\hline 09/19/2017 & Notice of Right to File & Jane Wixson ADRS & & Final letter sent to Atty Rep by priority mail signature confirmation tracking \# 23151670 00002388 7612, and to counselee by priority mail tracking \# 91149011 8986680262. & Notice of Right to File \\
\hline \multicolumn{6}{|l|}{Event Type: Formal Processing} \\
\hline 10/03/2017 & Formal Filed (2565 or equivalent) & Manuel Espinoza & & Autogenerated - Converted to Formal & Formal Start \\
\hline 10/10/2017 & DRS Report Requested & Manuel Espinoza & & & N/A \\
\hline 10/19/2017 & DRS Report Received & Kelly Hulett & & & N/A \\
\hline 10/23/2017 & Accepted/Written Notification (Put a check mark) & Kelly Hulett & \begin{tabular}{l}
Religious Accommodation (04/01/2017), \\
Disciplinary Action Reprimand (Letter of Warning) (06/12/2017)
\end{tabular} & & Claims Accepted \\
\hline 01/22/2018 & CP Requested FAD w/o Hearing & Michelle Davis & & & Request for FAD \\
\hline \multicolumn{6}{|l|}{Event Type: NEEOISO} \\
\hline 10/23/2017 & Received for Investigation & Kelly Hulett & & & Investigator Assignment \\
\hline 10/25/2017 & Assign to Contract Investigator & Kelly Hulett & & & N/A \\
\hline 01/03/2018 & ROI - Transmit to Complainant & Michelle Davis & & & Investigation End \\
\hline \multicolumn{6}{|l|}{Event Type: Formal Closure} \\
\hline 02/20/2018 & & & & & FAD - Merit \\
\hline
\end{tabular}
\begin{tabular}{|l|l|l|l|l|l|}
\hline Start & Activity & Updated By & Claim & Comment & \begin{tabular}{l} 
462/Class/Mixed \\
Mapping
\end{tabular} \\
\hline & \begin{tabular}{l} 
Final Agency \\
Decision (Merit)
\end{tabular} & \begin{tabular}{l} 
Michelle \\
Davis
\end{tabular} & & & \\
\hline
\end{tabular}

\section*{VIlla. Monetary Corrective Actions}

There are no monetary corrective actions for this case.
VIIIb. Non-monetary Corrective Actions
There are no non-monetary corrective actions for this case.

\section*{IX. Letters}

There are no Letters for this case.

\section*{X. Fees}
\begin{tabular}{|l|r|l|}
\hline Description & Fee & Complaint Type \\
\hline FAD Writer & \(\$ 450.00\) & Formal \\
\hline Investigation & \(\$ 1,200.00\) & Formal \\
\hline
\end{tabular}

\section*{XI. Documents}
\begin{tabular}{|l|l|l|}
\hline Date & Filename & Description \\
\hline Document Type: The Complainant & \\
\hline \(07 / 11 / 2017\) & PRE-025956-2017 GG.pdf & PRE-025956-2017 GG \\
\hline
\end{tabular}

\section*{XII. Narrative}

No complaint narrative currently exists for this case.

\section*{EEO Contact Summary / Gerald Groff}

Preferred Contact Number:
Best Time to Call: 12:00 Noon - 6:00 PM

\section*{Selected Office}

Office: 4C170:CENTRAL PA CS DISTRICT

\section*{Alleged RMO(s)}

\section*{Name: Brian Hess}

Job Title: Postmaster
Address: 55 Drytown Road
City: Holtwood
State: PA
ZIP: 17532
Phone: 717-284-2850
Email:

REDRESS® / Anonymity / Extension

REDRESS®: No
Anonymous: No
Extension: Yes

\section*{Grievance/MSPB Appeal/Section 650 Appeal}

Previous Grievance: No
MSPB Appeal: No
Section 650 Appeal: No

\section*{Representative Information}

Is your representative an attorney?: Yes
Name: David W. Crossett, Esq.
Job Title: Attorney
Organization: Cornerstone Law
Phone: 610-926-7875
Email: david@cornerstonelaw.us

\section*{Claims}

Claim Type: Religious Accommodation
Incident Date: 01/19/2019
Bases/Basis:
Religion:Christian
General:None Specified

Summary Of Issue: On January 19, 2019 I was constructively discharged from my position as a Rural Carrier Associate at the Holtwood, PA Post Office due to an ongoing lack of accommodation for my religious beliefs to not be required to work on Sundays, and the subsequent discipline I received from my employer since no accommodation was made to permit me to keep the entirety of the Lord's Day (Sunday) as unique and holy as a day of rest where I must not be required to work at all. I am requesting a claim of constructive discharge as a result of the hostile work environment and harassment I experienced from USPS management.

Remedy Requested: Money Damages; Expungement of Adverse Notations in Employment Record

\section*{Documents}

No Document Added

\section*{Rights and Responsibilities}

Rights and and Responsibilities: Acknowledged

\title{
Poster 72, Equal Employment Opportunity is The Law
}

\section*{Certification Form}

Complete and return the Poster 72 certification form by November 27 to:

> EEO Compliance and Appeals, Headquarters ATTN: Poster 72 November 2018 Certification U.S. Postal Service Headquarters 475 L'Enfant Plaza, SW, Room 9431
> Washington, DC \(20260-4135\)

\section*{MANDATORY POSTING}

I hereby certify that the November 2018 EEO Poster 72. Equal Employment Opportunity is The Law, has been distributed and visibly posted in all the lobbies (where applicable) and employee bulletin boards of all postal facilities within my Area.

Signature:


Title: Postmaster
is/olgistrictarea: Central PA

city. Heltwood
State: \(\qquad\) zip Code 17532

Gerald E. Graf
Rural Carrier Associate
Holtwood, PA Post Office

January 14, 2019

Brian Hess
Postmaster
Holtwood, PA Post Office

Brian,
This letter is to serve as the official notice of resignation for my position as a Rural Carrier Associate with the United States Postal Service at the end-of-shif on Friday, January 18. 2019 (effective date of resignation to be January 19, 2019).

After much prayerful consideration, I have decided to pursue more rewarding work/service interests, as I have not been able to find an accommodating employment atmosphere with the USPS that would honor my personal religious beliefs (e.g. to not work on Sundays) while also allowing me to pursue a livelihood without harassment and/or threat of discipline or dismissal.

I apologize for any inconvenience this will cause both yourself and my co-workers. but I humbly remind you that I did faithfully remain on staff during the busy holiday season and beyond. I wish you the best, and thank you.


Gerald E. Graf

CC: David Cosset, Esq.














Anhabilitation Ace Notice: Uader the Rchabitation Act, oridical information

 medied candwons and woth testrictions nhay be requested in solitecton with th




 oformation with thase whs have no need so know ard whose requess fer the


\section*{}

Pestal Service regulations :equire all Posta! Service employees to cuoperate in any Fostai Service investigation. Fabure to supply the requested infomation could result in disciplinary ation in accordance with ELM 665.5 and 665.6 .
\(\therefore\) Stament lContinte on PS Fown 2509 if adtionat spare is ipquired
3. Bring M. Hess ant the Postmaster of the Folwood Post Office. I have been assigned to the facility since February 2015. EEO ortor 72 cated November 201 is displayed on the bulietin board on the work room flocr. This version of Poster 72 has been posed since Aovember 2018 andis curpently on display. Prior to Novermber 2078 the previous version of Puster 72 was on display in the same focation betore larived. Poster 72 advises entployees of the the requirements for timely filing an EEO combeling request and the telephore wumber to contact to request counseling.
idechere under pervaly of pergry that the foregoing is true and correct.

\begin{tabular}{|c|c|c|c|c|c|c|}
\hline & \[
\begin{array}{|c|}
\hline \text { EFFECTIVE } \\
01-18-2019 \\
\hline
\end{array}
\] & & \multicolumn{3}{|l|}{Notification Of Personnel Action} & 02 CncIAI cecilipity Number \\
\hline \multicolumn{7}{|l|}{EMPLOYEE INFORMATION} \\
\hline \multicolumn{3}{|l|}{03 EMPLOYEE NAME-LAST} & GROFF & 38 & PROBATION EXPIR DATE & \\
\hline \multicolumn{3}{|l|}{04 EMPLOYEE NAME-FIRST} & GERALD & 39 & FLSA STATUS & N - NON-EXEMPT \\
\hline \multicolumn{3}{|l|}{05 EMPLOYEE NAME-MIDDLE} & E & 40 & PAY LOCATION & 003 \\
\hline \multicolumn{3}{|l|}{\multirow[t]{2}{*}{\[
\begin{aligned}
& \text { 06 MAILING ADDRESS } \\
& \text { STREET/BOX/APT }
\end{aligned}
\]}} & & 41 & RURAL CARRIER ROUTE & 00001 \\
\hline & & & & 42 & RURAL CARR-L-RTE-ID & \\
\hline \multicolumn{3}{|l|}{07 MAILING ADDRESS-CITY} & NEW PROVIDENCE & 43 & RURAL CARR-PAY TYPE & K-5 DAY HEAVY ROUTE \\
\hline \multicolumn{3}{|l|}{08 MAILING ADDRESS-STATE} & PA & 45 & RURAL CARR-FLSA & P \\
\hline \multicolumn{3}{|l|}{09 MAILING ADDRESS-ZIP+4} & 17560-9680 & 46 & RURAL CARR-COMMIT & \\
\hline 10 & \multicolumn{2}{|l|}{DATE OF BIRTH} & 1977 & 47 & RURAL CARR-EMA & E-EQUIPMENT MAINT
ALLOW \\
\hline \multicolumn{3}{|l|}{11 VETERANS PREFERENCE} & 1 - NO PREFERENCE & 48 & RURAL CARR-HOURS & 41 \\
\hline \multicolumn{3}{|l|}{12 SEX} & & 49 & RURAL CARR-MILES & 54 \\
\hline \multicolumn{3}{|l|}{13 ETHNICITY-RACE} & & 50 & JOB SEQUENCE & \\
\hline \multicolumn{3}{|l|}{14 DISABILITY} & & 51 & OCCUPATION CODE & 2325-07XX \\
\hline 15 & \multicolumn{2}{|l|}{LEAVE COMP DATE} & & 52 & POSITION TITLE & RURAL CARR ASSOCISRV REG RTE \\
\hline \multicolumn{3}{|l|}{16 ENTER ON DUTY DATE} & 07-14-2012 & 53 & LABOR DIST CODE & 2500 \\
\hline \multicolumn{3}{|l|}{17 RETIREMENT COMP DATE} & & 54 & DESIGNATION/ACTIVITY & 78/0 \\
\hline \multicolumn{3}{|l|}{18 SERV ANNIVERSARY PPYR} & & 55 & POSITION TYPE & 6-RURAL \\
\hline \multicolumn{3}{|l|}{19 TSP ELIGIBILITY} & I-INELIGIBLE & 56 & TOUR HOURS & 0 \\
\hline \multicolumn{3}{|l|}{20 TSP SERVICE COMP DATE} & & 57 & ALLOWANCE CODE & \\
\hline \multicolumn{3}{|l|}{21 PRIOR CSRS SERVICE} & & 58 & EMPLOYMENT TYPE & \\
\hline \multicolumn{3}{|l|}{22 FROZEN CSRS TIME} & & & LARY INFORMATION & \\
\hline \multicolumn{3}{|l|}{23 LEAVE DATA-CATEGORY} & 0.00 - INELIGIBLE & 59 & PAY RATE CODE & H \\
\hline \multicolumn{3}{|l|}{24 LEAVE DATA-CHG PPYR} & & 60 & RATE SCHEDULE CODE & B-RURAL \\
\hline \multicolumn{3}{|l|}{25 LEAVE DATA-TYPE} & 3-NO AL - NO SL & 61 & GRADEISTEP & 05/Y \\
\hline \multicolumn{3}{|l|}{26 CREDIT MILITARY SERV} & 0000 & 62 & BASE SALARY & 22.36 \\
\hline \multicolumn{3}{|l|}{27 reserved for future use} & & 63 & COLA & 0.00 \\
\hline \multicolumn{3}{|l|}{28 RETIREMENT PLAN} & 2-FICA & 64 & COLA ROLL-IN IND & \\
\hline \multicolumn{3}{|l|}{29 EMPLOYMENT STATUS} & & 65 & NEXT STEP PPYR & \\
\hline \multicolumn{3}{|l|}{30 LIFE INSURANCE} & AO - Ineligible & 66 & MERIT ANNIV DATE & \\
\hline \multicolumn{3}{|l|}{31 SPECIAL BENEFITS} & & 67 & MERIT LUMP SUM & 0.00 \\
\hline \multicolumn{4}{|l|}{POSITION INFORMATION} & 68 & SPECIAL SALARY CODE & \\
\hline \multicolumn{3}{|l|}{32 EMPLOY OFFICE-FIN NO} & 41-3736 & 69 & PROTECTED RSC & \\
\hline \multicolumn{3}{|l|}{33 EMPLOY OFFICE-NAME} & HOLTWOOD PO & 70 & PROTECTED GRADE/STEP & 1 \\
\hline \multirow[t]{2}{*}{34} & \multicolumn{2}{|l|}{\multirow[t]{2}{*}{EMPLOY OFFICE-ADDRESS}} & \multirow[t]{2}{*}{\[
\begin{aligned}
& \text { HOLTWOOD } \\
& \text { PA 17532-9998 }
\end{aligned}
\]} & 71 & EXPIRATION PPYR & \\
\hline & & & & 72 & PROTECTED RC HOURS & 00 \\
\hline \multicolumn{3}{|l|}{35 DUTY STATION-FIN NO} & 41-3736 & 73 & PROTECTED RC MILES & 000 \\
\hline \multicolumn{3}{|l|}{36 DUTY STATION-NAME} & HOLTWOOD PO & 74 & RC GUARANTEED SALARY & 0.00 \\
\hline \multicolumn{3}{|l|}{37 APPT EXPIRATION DATE} & & 75 & ANNUITY AMOUNT & 0.00 \\
\hline \multicolumn{7}{|l|}{NATURE OF PERSONNEL ACTION} \\
\hline \multicolumn{3}{|l|}{77 NATURE OF ACTION CODE} & 317 & & AUTHORITY & 39-USC Sect 1001 \\
\hline \multicolumn{3}{|l|}{79 DESCRIPTION} & \multicolumn{4}{|l|}{RESIGNATION ALL OTHER} \\
\hline \multicolumn{2}{|l|}{80 CODE 522} & 81 CODE & 82 CODE - 83 CO & & & \\
\hline \multicolumn{7}{|l|}{84 REMARKS} \\
\hline \multicolumn{7}{|l|}{PERSON ID
LAST DAY IN PAY STATUS ASSGN
RESIGNATION-VOLUNTARY. EMPLOMYEE VOLUNTARILY RESIGNED BASED ON ALLEGED
DISCRIMINATION BECAUSE OF RELIGION. EEO COMPLAINT PROCEDURES WERE AVAILABLE
TO EMPLOYEE.} \\
\hline \multirow[t]{3}{*}{85} & \multicolumn{3}{|l|}{\multirow[t]{3}{*}{AUTHORIZATION MANAGER, HUMAN RESOURCES SHARED SERVICE CENTER}} & & PROCESSED DATE & 01-18-2019 \\
\hline & & & & & PERSONNEL OFFICE ID & \\
\hline & & & & & OPF LOCATION & \\
\hline
\end{tabular}

PS Form 50, January 2009 (Exception to Standard Form 50)

April 9, 2019

Signature Confirmation
23171640000000918855

David W. Crossett, Esq.
8500 Allentown Pike Ste. 3
Blanton, PA 19510-9101
Gerald E. Groff
New Providence, PA 17560-9680

Claim Number: 4C-170-0041-19

Dear Mr. Groff,
This letter is to notify you that I have concluded the processing of your claim of discrimination initiated on \(3 / 4 / 2019\). It serves as your final interview and will provide you with the necessary information for filing a formal complaint, should you elect that option.

In this matter you allege discrimination based religious accommodation (Required to work on Sundays) when on 1/19/2019 you forced to resign your position because you were receiving progressive discipline for your refusal to work on Sundays, which conflicts with your religious beliefs.

On 4/10/2019 Postmaster Brian Hess responded to your allegations by stating you voluntarily resigned your position. Mr. Hess also stated you rejected several proposals offered to accommodate your religious beliefs.

At this time there is no resolution to your counseling request. You have two options available to you. You can do nothing at which point your inquiry will expire and no further action will be taken on your counseling request or you can elect to file a formal complaint.

If you opt to file a formal complaint, you have 15 days from the date of receipt of this letter to file a timely formal complaint. Your complaint could be subject to dismissal in accordance with 29 CFR Part 1614.107 if not filed within the 15 day time limit. Your complaint will be deemed timely if it is postmarked before the expiration of the 15 day time limit.

The Complaint must be specific and contain only those issues either specifically discussed with me or issues that are like or related to the issues that you discussed with me.
 If you choose to file a formal com 2565 and return them to the following address:

\section*{NEEOISO-Formal Complaint \\ U.S. Postal Service \\ P.O. Box 21979 \\ Tampa, FL 33622-1979}

You are not permitted to use a penalty envelope to submit your formal complaint. You will receive written acknowledgment of your formal complaint.
As a reminder, it is your responsibility to immediately notify NEEOISO, U. S. Postal Service, PO Box 21979, Tampa, FL 33622-1979, of any changes to your mailing address. If you designate or change your EEO representative, it is your responsibility to advise NEEOISO, in writing, of that person's name, title, mailing address, and phone number.

If you have any questions, please contact me.
Sincerely,

\section*{Seta 9. Gordon}

Geta J. Gordon
EEO ADR Specialist

Enclosures: \(\begin{aligned} & \text { PS Form 2579-A, Notice of Right to File Individual Complaint } \\ & \text { PS Form 2565, EEO Complaint of Discrimination in the Postal Service }\end{aligned}\)

UNITED STATES
POSTAL SERVICE ©

EEO Complaint of Discrimination in the Postal Service
(See Instructions and Privacy Act Statement on back of form.)
\begin{tabular}{|l|l|l} 
& 2. EIN or SSN if Applicant & \begin{tabular}{l} 
3. \\
Case Number \\
4C-170-0041-19
\end{tabular} \\
\hline 4b. City, State and ZIP+4 * Home Telephone Number & 7. Work Telephone Number
\end{tabular}
8. Position Title (USPS Employees Only)
11. Installation Where You Believe Discrimination Occurred
(Identify Installation, City, State, and ZIP+4)
12. Name \& Titie of Person(s) Who Took the Action(s) You Allege Was Discriminatory

16. Explain the specific action(s) or situation(s) that resulted in you alleging that you were discriminated against (treated differently than other employees or applicants) because of your race, color, religion, sex, age (40+), national origin, genetic information, disability, or retaliation for participation in a protected EEO activity. Note that if your allegation is similar or related to a previous complaint, that complaint may be amended . 29 C.F.R. 5 1614.106(d). Please use additional pages if necessary.
17. What remedy are you seeking to resolve this complaint?


Privacy Act Statement: Your information will be used to adjudicate complaints of alleged discrimination and to evaluate the effectiveness of the EEO program. Colection is authorized by 39 U.S.C. 401, 409, 410, 1001, 1005, and 1206. Providing the information is voluntary, but if not provided, we may not be able to process your equest. We may disclose your information as follows: in relevant legal proceedings; to law enforcement when the U.S. Postal Service - (USPS : ) or requesting agency be comes aware of a violation of law; to a congressional office at your request; to entities or individuals under contract with USPS; to entities authorized to perform audits; to labor organizations as required by law; to federal, state, local or foreign government agencies regarding personnel matters; to the Equal Employment Opportunity Com mission; and to the Merit Systems Protection Board or Office of Special Counsel. For more information regarding our privacy policies, visit www.usps.com/privacypolicy.

Rehabilitation Act Notice: Unde Rehabilitation Act, medical information is confidential and may only be requested or disclosed in very limited circumstances. edical documentation about the complainant's and possible comparison employees' medical conditions and work restrictions may be requested in connection with the investigation of an EEO complaint. Information about medical restrictions (but not medical conditions) obtained in the course of an EEO investigation may be disclosed o supervisors and managers who need to know about restrictions on the work or duties of the employee and about necessary accommodations. Supervisors and anagers are not permitted to share such information with peers or subordinates or o discuss the information with those who have no need to know and whose requests for the information are not job-related and consistent with business necessity
A. Use this form to file a formal complaint if you are an employee or applicant who believes that you have been discriminated against by the Postal Service because of your race, color, religion, sex (male, female), sex (LGBT), age (40+), national origin, genetic information, disability, or retaliation for participation in a protected EEO activity. You must have presented the matter to an EEO alternative dispute resolution (ADR) specialist within 45 calendar days of the date the incident occurred or, if a personnel action is involved, within 45 calendar days of the effective date of the personnel action. Mail the completed formal complaint to the following address:

NEEOISO - Formal Complaints
U.S. Postal Service

PO Box 21979
Tampa, FL 33622-1979
B. Unless you have agreed to extend the 30-day period for an additional 60 calendar days, you will receive a notice of right to file a formal complaint within 30 calendar days from the date of your first contact with the EEO Office. You must file your formal complaint within 15 calendar days of the date on which you receive your notice of right to file. If you do not receive a notice of right to file within the appropriate time penod, you may file a formal complaint at any time thereafter, up to 15 calendar days after receiving the notice.
C. If you have agreed to participate in ADR, the informal process must be completed within 90 calendar days of your first contact with the EEO office. You have a right to file a formal complaint at any time thereafter; up to 15 calendar days after you have received your notice of right to file.
D. Your notice of right to file contains the address where your formal complaint must be mailed or delivered and the address is listed in Part A of these instructions. The formal complaint will be deemed timely if it is received or postmarked before the expiration of the 15 -day filing period, or, in the absence of a legible postmark, if it is received by mail within 5 days of the expiration of the filing period.
E. The time limits for filing a formal complaint may be extended if you show that you were prevented by circumstances beyond your control from submitting the complaint by the time limit, or if you present other reasons considered sufficient by the Postal Service.
F. If you need help in preparing this form, you may get assistance from a representative of your choice. You may also seek guidance from the EEO ADR Specialist who issued you the notice of right to file.
G. Your formal complaint must be in writing and must be signed and dated by you or your attorney. You are entitled to a representative of your choice at all stages of the EEO complaint process; however, only an attorney can sign official EEO documents on your behalf.
H. If your written complaint is accepted, it will be assigned to an EEO complaints investigator who will provide you with an opportunity to present all facts that you believe resulted in the alleged discrimination. The EEO complaints investigator will conduct a thorough review of the circurnstances under which the alleged discrimination occurred.
I. While your complaint is under investigation, you may amend it to add claims that are similar or related. Contact the EEO office for the address where your written amendment request must be mailed or delivered.
J. You or your representative will each be provided a copy of the completed investigative file. You have the right to request a hearing within 30 calendar days of the date you receive the investigative file by mailing or delivering your request to the appropriate Equal Employment Opportunity Commission (EEOC) District Office with a copy sent to the following address:

\section*{NEEOISO - Formal Complaints}
U.S. Postal Service

PO Box 21979
Tampa, FL 33622-1979

If you are represented by an attorney, the 30-day period will begin on the date your attorney receives a copy of the case file. Instead of requesting a hearing, you may request an agency decision without a hearing and the head of the agency or his/her designee will issue you a decision letter with appeal rights.
K. If you request a hearing, the EEOC will appoint an administrative judge (A) to conduct a hearing. The AI will notify you and the Postal Service of the right to seek discovery before to the hearing to develop evidence reasonably on matters relevant to the issues raised in the complaint(s) to be heard. Attendance at the hearing will be limited to persons the AJ determines have direct knowledge relating to the complaint. Hearings are part of the investigative process and are closed to the public.
L. Following the hearing, the AJ will send you and the agency a copy of the hearing record, including the transcript and his/her decision. The head of the agency, or his/her designee, will review the entire record, including the transcript, and will determine whether or not to implement the A's decision. You will receive the agency's notification of final action within 40 days of the date the agency receives the Als decision. If the agency's final action will not fully implement the Al's decision, the agency must appeal to the EEOC. A copy of the Postal Service's appeal will be attached to your notification of final action.
M. If you are not satisfied with the decision of the A , or the agency's final action on the decision, you have the right to appeal within 30 calendar days after receiving notification of the agency's final action. Your appeal must be mailed to the EEOC at the following address:

\section*{EEOC Office of Federal Operations}

Federal Sector Programs
PO Box 77960
Washington, DC 20013-8960
You also must provide proof to the EEOC that a copy of the appeal, and any supporting documertation, was submitted to NEEOISO at the following address:

\section*{NEEOISO}
U.S. Postal Service

PO Box 21979
Tampa, FL 33622-1979
N. In lieu of filing an appeal of the agency's final action to the EEOC's Office of Federal Operations (OFO), you may file a civil action in an appropriate U.S. District Court within 90 calendar days of your receipt of the agency's final action.
O. You may also file a civil action in an appropriate U.S. District Court: (1) after 180 calendar days have passed from the date you filed the complaint, if the final agency action has not been issued and an appeal has not been filed; (2) within 90 days of receipt of the OFO's decision on your appeal; or (3) after 180 days have passed from the date you filed your appeal with the OFO, if there has been no decision issued on that appeal.
P. Special provisions exist for age discrimination. The law sets forth the right to bypass the administrative complaint processing procedure and file a civil action. For additional information, contact the EEO office.
Q. Under the Equal Pay Act, you have the right to file a civil action without exhausting the administrative procedures.
R. You must keep the EEO complaint processing office aware of your current mailing address at all times. Failure to notify the NEEOISO- EEO Contact Center and the EEOC of an address change could result in the dismissal of your complaint.

This notice will attest to the fact that on
April 11, 2019 I advised you of the actions taken concerning the alleged discrimination that you brought to my attention. If the matters that you raised during the pre-complaint processing stage have not been resolved, you have the right to file a formal complaint within 15 calendar days of the date you receive this notice. If you decide to file a formal complaint, your complaint must be put in writing and signed by you or your attomey, if you retained one to represent you. I am providing you with PS Form 2565, EEO Complaint of Discrimination in the Postal Service, for this purpose. Your complaint must be mailed or delivered to:
```

NEEOISO - Formal Complaints
U.S. POSTAL SERVICE
P.O. BOX 21979
TAMPA, FL 33622-1979

```

Your complaint will be deemed timely filed if it is received at this address before the expiration of the 15-day filing period, or if it bears a postmark that is dated before the expiration of the filing period, In the absence of a legible postmark, it must be received by mail within 5 calendar days of the expiration of the filing period.
An EEO discrimination complaint can be processed only if the complainant alleges he or she has been discriminated against on the basis of race, color, religion, sex (male, female), sex (LGBT), national origin, age (40+), disability, genetic information, or retaliation for participation in protected EEO activity, In addition, courts have ruled the complainant has the burden of presenting evidence which would give rise to an inference of discrimination. A complaint must contain the following information:
(1) Your name, address, position, and level;
- If you change your address, you have a regulatory requirement to immediately report the change to the address below: NEEOISO-EEO Contact Center, U.S. Postal Service, P.O. Box 21979, Tampa, FL 33622-1979
(2) The specific action or matter complained of, the date of occurrence, and the names of the official(s) who took the alleged discriminatory action at issue in this complaint;
3) The specific type of discrimination alleged, (e.g., race - African American, sex - female);
- If you allege age discrimination, you must have been at least 40 years of age on the date the alleged discriminatory action occurred.
(4) A brief statement of the facts that led you to believe you were discriminated against and the names of similarly situated individuals whom you believe were treated differently than you.
- If you allege a failure to accommodate a disability or your religion, you must explain the accommodation sought and why you sought it.
- If you allege retaliation, you must show a connection between the action about which you are complaining and your participation in protected EEO activity. You also must show when the alleged discriminatory action at issue in this complaint occurred, the management official who took the action was aware that you had previously engaged in protected EEO activity.
(5) The name of the EEO Aftemative Dispute Resolution Specialist who provided you with this notice and the date you received this Notice of Right to File.

\section*{Privacy Act Statement and Rehabilitation Act Notice}

Privacy Act Statement: Your information will be used to adjudicate complaints of alleged discrimination and to evaluate the effectiveness of the EEO program. Collection is authorized by 39 U.S.C. 401, 409, 410, 1001, 1005, and 1206. Providing the information is voluntary, but if not provided, we may not be able to process your request. We may disclose your information as follows: in relevant legal proceedings; to law enforcement when the U.S. Postal Service \({ }^{(2)}\) (USPS \({ }^{(3)}\) ) or requesting agency becomes aware of a violation of law; to a congressional office at your request; to entities or individuals under contract with USPS; to entities authorized to perform audits; to labor organizations as required by law; to federal, state, local or foreign government agencies regarding personnel matters; to the Equal Employment Opportunity Commission; and to the Merit Systems Protection Board or Office of Special Counsel. For more information regarding our privacy policies, visit www.usps.

Rehabilitation Act Notice: Under the Rehabillation Act, medical information is confidential and may only be requested or disclosed in very llimited circumstances. Medical documentation about the complainant's and possible comparison employees' medical conditions and work restrictions may be requested in connection with the investigation of an EEO complaint. Information about medical restrictions (but not medical conditions) obtained in the course of an EEO investigation may be disclosed to supervisors and managers who need to know about restrictions on the work or duties of the employee and about necessary accommodations. Supervisors and managers are not permitted to share such information with peers or subordinates or to discuss the information with those who have no need to know and whose requests for the information are not job-related and consistent with business necessity.


\section*{CERTIFICATE OF SERVICE}

I certify that on this date that PS Form 2579-A, Notice of Right to File Individual Complaint; PS Form 2565, EEO Complaint of Discrimination in the Postal Service were mailed to the following party at the mailing address listed below:

David W. Crossett, Esq.
8500 Allentown Pike Ste. 3
Blanton, PA 19510-9101

Gerald E. Groff
New Providence, PA 17560-9680

Signature Confirmation
23171640000000918855

USPS Tracking
9114901496451829487301

\section*{Geta I. Gordon}

Geta J. Gordon
EEO ADR Specialist

April 11, 2019
Date

4C-170-0041-19



\section*{USPS Tracking Intranet Tracking Number Result}
1.On 3/31/19, PTR changed the event description on all versions of the intranet tracking results for consistency. E.g., on the container results page, the U1 event was UNLOAD but now reflects ARRIVE USPS FACILITY. The change is for the description only. 2."Scheduled Delivery Date from the ISC" is incorrectly showing "by 8:00pm" on the Internet and Intranet tracking results page for intemational items. Until this is fixed on the page, please disregard the time of "by 8:00pm" and adhere to the correct commitment time of 3:00pm; delivenes/attempts after 3:00pm fail service. Updated: 4/18/19

Result for Domestic Tracking Number 23171640000000918855
\begin{tabular}{|c|c|c|c|}
\hline \multicolumn{4}{|l|}{Destination and Origin} \\
\hline \multicolumn{4}{|l|}{Destination} \\
\hline ZIP C & Code & City & State \\
\hline 19510 & & BLANDON & PA \\
\hline \multicolumn{2}{|l|}{Origin} & & \\
\hline Clity & State & & \\
\hline
\end{tabular}

\begin{tabular}{|c|c|c|c|c|c|c|c|c|c|}
\hline \multicolumn{10}{|l|}{Events} \\
\hline Event & \[
\left|\begin{array}{l}
\text { Event } \\
\text { Code }
\end{array}\right|
\] & Event & \begin{tabular}{l}
Event \\
Time
\end{tabular} & Location & Input Method & Scanner ID & Carrier Route & \begin{tabular}{l}
Posting \\
Date 1 \\
Time \\
(Central \\
Time)
\end{tabular} & Other Information \\
\hline DELIVERED, LEFT MTH
INDIMIDUAL INDIVIDUAL & 01 & 041152019 & 09:35 & BLANDON, PA 19510 & scamed & MDO \(15126089 A A\) interface type. wireless ) & Scanned by route 9510R00 & 04/45/2019 08:38:41 & \begin{tabular}{c} 
View Delivery Signature \\
and Address
\end{tabular}
\begin{tabular}{l} 
GEO Location Dats Aveitabhe \\
Facity Finance Number: 410716
\end{tabular} \\
\hline
\end{tabular}

CONFIDENTIAL
https://pts-2.usps.gov/pts2-web/tcIntranetTrackingNumResponse?label=231716400000009... 4/26/20USPS00608
\begin{tabular}{|c|c|c|c|c|c|c|c|c|c|}
\hline Event & Event Code & Event
Date & Event Time & Location & Input Method & Scanner ID & Carrier Route & Posting Date I Time (Central Time) & Other Information \\
\hline & & & & & & & & & \begin{tabular}{l}
Request Delivery Record \\
Reciplent Name: C LAW
\end{tabular} \\
\hline NO ACCESS & 30 & 04/13/2019 & 09:45 & BLANDON,
PA 19510 & Scanned & MDO 15126D855E (interface type wireless) & Scanned by poute 9510 R 001 & \[
\left|\begin{array}{l}
0413: 2019 \\
08: 47: 35
\end{array}\right|
\] & GEOL Lacation Data Available \\
\hline OUT FOR DELIVERY & OF & 04/13/2018 & 08:00 & BLANDON.
PA 19610 & \[
\begin{aligned}
& \text { System } \\
& \text { Generated } \\
& \hline
\end{aligned}
\] & & & \[
\begin{aligned}
& 047332019 \\
& 07: 35: 33 \\
& \hline
\end{aligned}
\] & \\
\hline SORTING/PROCESSING COMPLETE & PC & 04/13/2019 & 07:50 & BLANDON,
PA 19510 & System
Gonerated & & & \[
04 / 13 / 2019
\]
07:35:32 & Distribition Complete Label ID: DC13 5613 9001 1904 1307 2851000 \\
\hline ARRIVAL AT UNIT & 07 & 04/13/2019 & 07:08 & \[
\begin{aligned}
& \text { BLANDON. } \\
& \text { PA 19510 }
\end{aligned}
\] & Scanned & DSS-057-00 & Destined to route R001 & \(0413 / 2019\) 08:18:41 & \\
\hline ARRIVE USPS FACILITY & U1 & 04/13/2019 & 06:47 & BLANDON. PA 19510 & Comainer Generated & IMD 030SHNZ3PZ & & 04/13/2018 07:55:40 & Comainer Type: GAYLORD 4FT Container ID: 99P195102C-001LL8. 28465211 \\
\hline DEPART USPS facility & T1 & 04/13/2019 & 04:51 & LANCASTER, PA 17604 & Contalner Generated & \(80 \times 1500148\) & & \[
\begin{aligned}
& 04 / 1322019 \\
& 04: 26: 40
\end{aligned}
\] & Cortaner Type: GAYLORD 4FT Container ID: 99P195102C-004LIg 28465211 \\
\hline DEPART USPS FAC:LITY & L1 & 04/13/2019 & 04:37 & \begin{tabular}{l}
LANCASTER, \\
PA 17604
\end{tabular} & Container Generated & \(13 \times 1502148\) & & \[
\begin{aligned}
& \text { 0a/13:2019 } \\
& 04: 26: 40
\end{aligned}
\] & Container Type: GAYLORD 4FT Container ID: 99P195102C-001닝 28465211 \\
\hline CONTAINER CLOSE & c \(\dagger\) & 04/13/2019 & 03:52 & LAMCASTER. PA 17604 & Container Generated & \(18 \times 1600803\) & & \[
\begin{aligned}
& \text { 04/13/2019 } \\
& 03: 25: 36
\end{aligned}
\] & Container Type: GAYLORD 4FT Contaner ID: 99P195102C-001469 28465211 \\
\hline ENROUTEPROCESSED & 10 & 04/12/2019 & 20:43 & LANCASTER. PA 17604 & Scanned &  & & \[
\begin{aligned}
& 04 / 1212019 \\
& 19: 47: 34
\end{aligned}
\] & \\
\hline ARRIVE USPS FACILITY & U1 & 04/12/2019 & 19:30 & LANCASTER. PA 17604 & Container Generated & \(89 \times 1700316\) & , & \[
\begin{aligned}
& 04 / 12 / 2019 \\
& 19: 08: 38
\end{aligned}
\] & \[
\begin{aligned}
& \text { Container ID: 99P175-1C1C1X91.3. } \\
& 36812601 \\
& \hline
\end{aligned}
\] \\
\hline ARRIVE USPS FACILTTY & A1 & 04/12/2019 & 07:14 & LEXINGTON. KY 40511 & Conlainer Generaled & \(39 \times 1502060\) & & \[
\begin{aligned}
& \text { 04/122019019 } \\
& 08: 55: 41
\end{aligned}
\] & Container ID: g9P175--1C1C1X9L3.
\(\mathbf{3 6 8 1 2 6 0 1}\) \\
\hline DEPART USPS FACILITY & T1 & 04/12/2019 & 05:26 & \begin{tabular}{l}
LOUISVILE. \\
KY 40231
\end{tabular} & Container Goneratad & 58×1501729 & & \[
\begin{aligned}
& \text { 04/1222019 } \\
& \text { 05:09:39 }
\end{aligned}
\] & Contaner 1D: 99P175-1C1C1X9L3:
36812801 \\
\hline DEPART USPS FACILITY & \(L 1\) & 00/12/2019 & 05:25 & \begin{tabular}{l}
LOUSVILLE. \\
KY 40231
\end{tabular} & Comainer Generaled & \(39 \times 1501640\) & & \[
\begin{aligned}
& 04 / 1222019 \\
& 04: 56: 32
\end{aligned}
\] & \[
\begin{aligned}
& \text { Container ID: 99P175-1C1C1X9133 } \\
& 36812601
\end{aligned}
\] \\
\hline CONTAINER CLOSE & C1 & 04/12/2019 & 02:45 & \begin{tabular}{l}
LOUISVILLE. \\
KY 40231
\end{tabular} & Container Generated & \(18 \times 1600348\) & & \[
\begin{aligned}
& \text { 04/12/2019 } \\
& \text { 02:32:34 }
\end{aligned}
\] & Container ID: 99P175-1C1C1X9L3.
36812601. \\
\hline ENROUTEPROCESSED & 10 & 0411/2019 & 22:05 & LOUISVILLE. KY 40231 & Scanned & \[
\begin{array}{|l|l|}
\hline \text { SPBSTS-003 } \\
-000001
\end{array}
\] & & \[
\begin{aligned}
& \text { 04111/2019 } \\
& 21: 21: 38
\end{aligned}
\] & \\
\hline
\end{tabular}

Enter up to 35 items separated by commas.

Select Search Type: Quick Search V \(\qquad\)
Submit
Product Tracking \& Reporting, All Rights Reserved
Version: 19.2.4.0.11

CONFIDENTIAL

\section*{Product Tracking \& Reporting}

\author{
Home
}

Rates/
Commitments

Help

April 26, 2018

\section*{USPS Tracking Intranet}

Delivery Signature and Address
1.On 3/31/19, PTR changed the event description on all versions of the intranet tracking results for consistency. E.g., on the container results page, the U1 event was UNLOAD but now reflects ARRIVE USPS FACILITY. The change is for the description only. 2."Scheduled Delivery Date from the ISC" is incorrectly showing "by 8:00pm" on the Intemet and Intranet tracking results page for international items. Until this is fixed on the page, please disregard the time of "by \(8: 00 \mathrm{pm}\) " and adhere to the correct commitment time of 3:00 pm; deliveries/attempts after \(3: 00 \mathrm{pm}\) fail service. Updated: 4/18/19

\section*{TrackIng Number: 23171640000000918855}

This item was delivered on 04/15/2019 at 09:35:00
<Retum to Tracking Number View


Enter up to 35 dems separated by commas.

Select Search Type: Quick Search Submit
Product Tracking \& Reporting, All Rights Reserved
Version: 19.2.4.0.11

\title{
Gerald Groff \\ Rural Carrier Associate Holtwood Post Office
}

\section*{Law Department Reference Matter No. PH201935261}

\author{
Text Messages \\ June 2018 - January 2019
}


\title{
Attached are text messages with Gerald Groff from June 8, 2018 through January 17, 2019.
}

Gerald Groff's responses are on the left side and my responses (Brian M. Hess) are on right side.

\section*{What whe dill coct ghlow Dhas.}


\section*{4 thand}


I got another EEO packet to do. Front page says to do it on the clock (see photo). They want it done by computer and emailed. Is it ok if I give you start/stop times if I just keep at it til done?
\[
\begin{aligned}
& \text { That the is the Soyou are } \\
& \text { seheduled for Amazon this } \\
& \text { Sunday 6/17. I have celledel } \\
& \text { the ReAs that are mot } \\
& \text { scheduled and no gne has } \\
& \text { voluntecred to covel your } \\
& \text { route. Please le the know } \\
& \text { what your response is. Thay } \\
& \text { you: }
\end{aligned}
\]

Thank you for trying and making all those phone calls. That's what I expected as far as no volunteers \(\Leftrightarrow=\). My response would s木illibe that I

\title{
Thank you for trying and making all those phone calls. That's what I expected as far as no volunteers E . My response would still be that I must keep the Lord's day, come what may.
}


Jun \(13,2918,1917 \mathrm{Am}\)


Got it


SUM Confonntal 10.0 M

\title{
Just finished. Don't enjoy this stuff at all! 900 am to 100 pm. Only 1 coffee and 3 potty breaks (probably related, lol)
}


\section*{Thanks!}
\[
\text { Jum } 20,2018,0: 57 \mathrm{AM}
\]

\section*{Got message. Likely to be late}
```

JW22,2018,2696PM

```


\section*{Got message. Likely to be late}
\[
\text { Wh } 22,20 \text { B, } 230 \mathrm{PM}
\]


\section*{Headed out on 2nd trip now}


\section*{Prolly by 3}


\section*{Thank me with gifts and \$\$}

\section*{Case 5:19-cv-01879-JLS Document 36-2 Filed 02/14/20 Page 237 of 356}

\[
\text { Jun } 2,2018,2,27 \mathrm{PM}
\]


\title{
Nosey? Nice. Lol. I think it's ok. Just aches now and might scar ugly.
}

> Ok. Hepetuly you wont have scar. Ged it is better. tooked nasty earle.

\section*{It was. Lol. Never saw so much blood in my life}


\section*{Whoa cool, Justin?}


\section*{Ok, I appreciate it if u talk to her again sometime}

\[
\text { Mon, vite, } 20 \mathrm{OPM}
\]

\title{
Thanks 4 the cold treat. That really hit the spot!
}
\[
\text { Tue, } 3 \mathrm{~m} 3,922 \mathrm{Am}
\]

Protadivment sce vou atet Plesse vertruesclaydmo er
yoy senequle tor wind.

K

The Jub. 224 PM

\section*{Where is mary now? Should I grab her outgoing?}

Fr, Jul \(6,2,31 \mathrm{PW}\)


\section*{So I'm casing it and delivering some?}

\section*{Case 5:19-cv-01879-JtS Document 36-2 Filëd 02/14/20 Page 240 of 356}



 Amaren this sunday but someone has volunteered to oover for you, Flave a great day

\section*{Cool, thanks}
\[
\text { Tue, } 1024,5.13 \mathrm{PM}
\]

\title{
So much iots week witiverer \\  wil necd you tor p2, vyelerte

}

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\section*{You would like her to what??}

\section*{Ride along with you that day}

\section*{Isn't that the regulars job to train their sub??}

> Itis not a traning day, it is a shadow day uis to observe the job

Can u borrow andedvifor thurs?

\section*{Can u borrow an LLV for thurs? My car was full from floor to ceiling, front to back everyday last week. Don't see how it's gonna work for a ridealong.}


Wed, Jul \(25,658 \mathrm{AM}\)

\section*{On the way}

Thank you

Thecondobata 10 PM

\section*{Ok thanks}
\[
\text { Tue, Jul } 51,9.05 \mathrm{PH}
\]

\section*{Fyi, I'm available tomw after all. Mom's tests got postponed.}

Ok. Thanks for the heads up:

Sorry, I was mowing. My answer is the same. Due to my faith to keep the Lord's day in its entirety, I cannot in good conscience report this Sunday.

0k. Whank for get ting back to
me. BTW Rogers mom's.
houstureds mowed too. qumum


\title{
Def and don't mow when it's still wet like I just did. Lol
}

\section*{Btw, I'm in quarryville tomw}



\section*{I'd like to take my nephew and niece to Hershey park next weds. (15th) if \(u\) can live without me.}


I got a big crack in my
windshield today on 283
behind a truck (rock flew off).
Safelite is scheduled tomw between 12 to 5 to repair it in my driveway. Just fyi that I'll need to get home. That's only times they offer.

Wer, Aug \(22,3.56 \mathrm{PM}\)

\section*{Been hiking with no phone service much of the day. I can Work for mary tomw. Sunday is same answer as always.}


\section*{Pa and Md. Kellydsumbund} Paut Donnal mn riveon

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\section*{I don't think so}


Ok
\[
\text { The, Muc } 2 \mathrm{~B}, \mathrm{R}, \mathrm{AM}
\]


I Figured Thanks


\section*{Yep, I added to the green card too}



\section*{I'm fine with you taking it on a day like this. Thanks}

\author{
Wen, Seps.632 pm
}

Chrissy wants to know if 11 am is doable on fridax instead of 11?nつ


\section*{Right}

\section*{How about thurs 1130}


Ok, 1130 tomw it is. Thanks
\[
\text { Med, } 30 \mathrm{cos}, 40 \mathrm{pm}
\]

\title{
Got the voicemail. Thanks for looking for coverage volunteers, but I must still keep the Lord's day and decline.
}

\title{
I'm in north east, Md at WalMart. Mom asked me to drive her down.
}


Sorry


\section*{K I'm on at quille til I hear from}

U


Wed, \(5 \mathrm{er} 20,803 \mathrm{~mm}\)

\section*{Any update on tomwiwith r1?}

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\begin{tabular}{|c|c|}
\hline \multicolumn{2}{|l|}{\multirow[t]{2}{*}{Shee youare commited to 175Cot dondow tht to pullyeu}} \\
\hline & \\
\hline \multicolumn{2}{|l|}{back to make them short} \\
\hline \multicolumn{2}{|l|}{stafiec.solam elamrne on} \\
\hline \multicolumn{2}{|l|}{usine volcuetn it in iecessed} \\
\hline \multicolumn{2}{|l|}{Are vod es with ne using hel} \\
\hline \multicolumn{2}{|l|}{- yov can hele 17665} \\
\hline
\end{tabular}

\section*{Ok, then eb gets help this time}

\section*{Everybody}

Thu, sep 27, 10:55 AM

> When your done in euarivelle would you be able to delvere the tolvood section of rl?
> Al cases and ready to ge

\section*{I can try. She had accident and is casing up mail. I'm doing parcel run and then doing full 65 mile route}


Let's say I pull down and leave before noon. No large parcels so say done by 3 pm . If u grab outgoing to be safe if it comes to that, I think we'll be ok


\section*{Ur gonna deliver it?}

Or ur planning on me doing it?
Dhaniphenyyolim Marvic wassom


\section*{Gonna be after 3}


\section*{Just hung up scanner}
\[
\text { Mon, Ocen, } 4,41 P \mathrm{~A}
\]

Justee wanted to contim the
you have Saturday 10,6 on R'S
on your scliedile.

Yep, u gave me that one. Was it 10 am start time for Monday Amazon like usuah inemtas


\author{
The, oct \(16,6.46 \mathrm{An}\)
}

\title{
You woke me up! Double pay!!! I'll be in.
}


\section*{Do u know anything about Jeff for tomw? Qville is asking for help.}


Thu, oct18, 22 pm 7:53 AM \(93 \%\) \(<\)


Gerald:

7us 0w: \(5 \therefore\) n
\& AT\&T ETE
7:51 AM
93\%


Got it




I rint another FFO nacket tn तो


JA 425

I got another EEO packet to do
in regards to 14 day suspension. Photo shows page saying can be done on the clock with permission. Ok to do here and submit time again?


Ok, I respectfully decline to keep the Lord's day as always.


Ok

\title{
Done! 9:15 to 11:47. This packet wasn't as big as last few! Thanks.
}


\section*{Got it}


\title{
U want me to help with parcels the day after thanksgiving, right? 23rd. For some reason I wrote down Saturday the 24th. Just checking to be sure.
}


Pk
Ok

Tue, Nov \(13,8: 9 \mathrm{Am}\)
I have that you want me in today at 10 am . Is that still the plan?

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```

Ole what ahout nutronina? Im

## Ok, what about outgoing? I'm starting pinnacle



## K




## K



Case 5:19-cv-01879-JLS Document 36-2. Filed $02 / 14 / 20$ Page 261 of 356 h, 以ry 2 ,

## Got it. Any chance i could have Saturday off then?



$$
\text { Fri, Nat20, } 910 \text { an }
$$

Amazon has not arrived yot Please hold of in coming in until 10s0. Hropef uly they wil be here by then. I wilk keepyry posted if anything changes.

## K

> Rather than kecp you hengin? blease plan an coming lin at 2.00 PM: ALO O HOW Mo


## Oh ok



## Would u rather just save it all for tomw?



# If rather avoid working in the dark if at all possible. 

## Pen Now 30.4 mpm

## I assume ur getting Mary's mail? I'm back and assume were done. See u tomw at 930



## Yep, no problem



Have to split last run. Couldn't jenga them all in for one trip. Lol

Mon, Dec 3, 12:28 mm

I'm sorry I snapped at you this am. I don't handle stress well and I'm bearing more than just work. Not an excuse, just a reason. Today isn't ur fault. I'm trying my best out here but it's a mess.

But lam sorry, forgive me please


## Ok

## I got Mary's pickup at 1436 susq

I fixed the 552 drytown mistake. It was still on porch. Fyi

Sat Decy. 8 ata

# My car won't start. Completely dead. Dash lights even went out. Has new battery too so not sure what's wrong ${ }_{\text {tut }}$ 

## Any idea where 439 drytown is? Horst is name



## Horst



That's 475. Already tried that

## U were right, thanks

\& AT\&T LTE
7:36 AM
$97 \%$
$<$
Gerald:



K

Fri. Decta, whm
Is my start time flexible tomw at all? I'm having trouble at my house and my dad can help me first thing in the am, if that's doable.


Not sure, maybe 1030? That's a guess

Maybe sooner. Don't know
how long it will take. I want the

# Maybe sooner. Don't know how long it will take. I want the hours though, please. 

## I just mean please don't give away the work



## I'll be in, just a bit later

Ok, will do

$$
\operatorname{Set}, \mathrm{Dec} 15,1014 \mathrm{AM}
$$

On my way



## Thase wartin every tumore

 4n


## Yep wherd bowe the <br> 7500 ctendale

Yes, all the same.

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Fri, Dec 21, 13:4 AM


## K

Thu, Dec 27, 655 An


## K

$$
\text { Wed, } \operatorname{san} 2,550 \mathrm{Am}
$$

## Do u need aux helputhoday?



## Case 5:19-cv-01879-JLS Document 36-2 Filed 02/14/20 Page 271 of 356 (a)

# Fri, jana, 117pm 



## It's just a priority envelope that would fit in mailbox

## Think they're confused. There's a FedEx box already on porch. I left ours there too.

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Tue, ben e, 45.5 M

## Just got home. R2 tomw. Got it





## Ok thanks.

Case 5:19-cv-01879-JLS Document 36-2, Filed 02/14/20 Page 273 of 356 Sat, Jan 12, 12.12 PM


## I told quille could work thurs and Fri.





## I have her outgoing and pickup. She missed parcel so gonna do that on way in.

Case 5:19-cv-01879
A this point have not heard back from Vatere. I will need
vou to cover riz tomorrow becalsed any asstining ber cat has notbeen repalred.
tustrecidd acet ion vel she wil be able to wopk tomerrow

## Dirnt want to pull you back from Qvile so all is good

Thu, Jam 17, $8,30 \mathrm{AM}$

> Itotally forgot and Mary dust reminded me- This Saturday 119 is Mary's holiday so I will need you for R1. Thanks

The coñomatal 39 PM

Thu, Jan $7,8: 90$ An


The Jen M, 2.38 PM

## I received your text.

OR. Thanks In adefition to this Saturday will need you tor Sat: 1126 for P 8

Then, Jan $17,420 \mathrm{PM}$

## dest vantee lo eonfli you got 126 Gs well

## I received your text

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From: Hess, Brian M
Sent: Wed Mar 15 13:54:35 2017
To: French, Douglas C - Lancaster, PA
Cc: Krempa, Keith R - Lancaster, PA; Eckard, Norman - Spring Grove, PA; Kirchner, Barbara E - Central PA District
Subject: RE: Sunday Amazon Schedule, 3/19/17

## Importance: Normal

Attachments: image002.jpg; image003.png

So tried to use link, but it was not active. Went to Amazon schedule and Holtwood Post Office was not listed as part of the expanded hub offices.

Holtwood RCA Gerald Groff is scheduled to work this Sunday 3/19. He has stated that due to his Faith he does not believe in working on Sundays. He stated he will resign if forced to work Sundays. I hate to lose one of the best and most efficient RCAs I have ever had, but he will not be reporting on Sunday.

He stated that he would submit a resignation letter or my only other recourse is corrective action.
Is there other solution to this issue? Hate to lose a good dependable employee.

## Brian M. Hess

Postmaster Holtwood Post Office
55 Drytown Rd
Holtwood, PA 17532
717-284-2850
[Image result for usps
logos]<htips://www.google.com/url?q-http://www.userlogos.org/logo/nickbyalongshot/02162011/uspscom\&sa=U\&ved-0ahUKEwiWxI beqdjPAhWDWT4KHcxUA9AAFBDBbggWMAA\&USg-AFQICNFE9p8IkUUdHo0m4cLLAAdLTVVIUQ>

From: French, Douglas C - Lancaster, PA
Sent: Monday, March 13, 2017 4:40 PM
To: 17501, Postmaster - Akron PA; 17502, Postmaster - Bainbridge PA; 17503, Postmaster - Bart PA; 17504, Postmaster - Bausman PA; 17505, Postmaster - Bird in Hand PA; 17506, Postmaster - Blue Ball PA; 17507, Postmaster - Bowmansville PA; 17508, Postmaster Brownstown PA; 17509, Postmaster - Christiana PA; 17512 Columbia, PA; 17512, Postmaster - Columbia PA; 17516, Postmaster Conestoga PA; 17517 Denver, PA; 17517, Postmaster - Denver PA; 17518, Postmaster - Drumore PA; 17519, Postmaster - East Earl PA; 17520, Postmaster - East Petersburg PA; 17521, Postmaster - Elm PA; 17522 Ephrata, PA; 17522, Postmaster - Ephrata PA; 17527, Postmaster - Gap PA; 17528, Postmaster - Goodville PA; 17529, Postmaster - Gordonville PA; 17532, Postmaster - Holtwood PA; 17533, Postmaster - Hopeland PA; 17534, Postmaster - Intercourse PA; 17535, Postmaster - Kinzers PA; 17536, Postmaster - Kirkwood PA; 17537, Postmaster - Lampeter PA; 17538, Postmaster - Landisville PA; 17540, Postmaster - Leola PA; 17543 Lititz, PA; 17543, Postmaster - Lititz PA; 17545 Manheim, Pa; 17545, Postmaster - Manheim PA; 17547, Postmaster - Marietta PA; 17550, Postmaster Maytown PA; 17551, Postmaster - Millersville PA; 17552 Mount Joy, PA; 17552, Postmaster - Mount Joy PA; 17554, Postmaster Mountville PA; 17555, Postmaster - Narvon PA; 17557 New Holland, PA; 17557, Postmaster - New Holland PA; 17560, Postmaster New Providence PA; 17562, Postmaster - Paradise PA; 17563, Postmaster - Peach Bottom PA; 17564, Postmaster - Penryn PA; 17565, Postmaster - Pequea PA; 17566 Quarryville PA; 17566, Postmaster - Quarryville PA; 17567, Postmaster - Reamstown PA; 17568, Postmaster - Refton PA; 17569, Postmaster - Reinholds PA; 17570, Postmaster - Rheems PA; 17572, Postmaster - Ronks PA; 17575, Postmaster - Silver Spring PA; 17576, Postmaster - Smoketown PA; 17578, Postmaster - Stevens PA; 17579, Postmaster - Strasburg PA; 17580, Postmaster - Talmage PA; 17581, Postmaster - Terre Hill PA; 17582, Postmaster - Washington Boro PA; 17584, Postmaster Willow Street PA; 17585, Postmaster - Witmer PA; 17601 Lancaster, PA
Cc: Elbertson, Kevin P - Harrisburg, PA; Tyneway, Mary - Harrisburg, PA; Varano, Robert L - Harrisburg, PA; Haine, Paula J Harrisburg, PA; 'chrissy.miller@nrlca.org'; Ahmad, Mansoor - Lancaster, PA; Morris, Treva A - Lancaster, PA; Meley, Megan Lancaster, PA; Pantaleo, Jason M - Lancaster, PA; Myers, Katie E - Lancaster, PA; Miller, Thomas W - Lancaster, PA; Byers, Erich C Lancaster, PA
Subject: Sunday Amazon Schedule, 3/19/17

## NOTE THE CHANGE TO THE PSE SCHEDULE. WE ARE CHANGING TO A 0430AM START TIME FOR SOME OF THE PSE'S. PLEASE REVIEW THE SCHEDULE CAREFULLY.

If you have an employee on the schedule please go into the Sunday Amazon schedule and supply the

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information requested for Lancaster. I have provided the link below. We will use this as validation that all employees were notified of the schedule.
[cid:image003.png@01D29D70.D3FB3780]http://eastern.fws.usps.gov/sites/centralpa/Amazon/Lists/Amazon\ Hub\ Schedule/Ama zon \%
20Schedule.aspx

See attached schedule for this week's Sunday Amazon Schedule.
Please make sure all carriers are made aware that we are back to a 10:30AM
Start Time.
PSE start times have been changed to 0430am
Due to issues with parcels getting assigned to
routes, I am scheduling additional carriers in case we need to add static routes

You are being issued this seven (7) calendar day paper suspension (no-time-off) for the following reason(s):

## CHARGE: IMPROPER CONDUCT

On December 3,2017 and December 17,2017 you were instructed that you were to work for Sunday Amazon. You repeatedly refuse to work any of the Sundays that you are instructed to work. You have stated that you are aware of the requirement to work Sundays and you refuse because you are a Christian and it should be respected that no work should be done on a Sunday. Attempts have been made to accommodate your religlous bellefs and allow you to come to work later than other employees so that you may attend church services on Sunday. You still refuse to comply with the requirement for you to work Sundays stating that an actual reasonable accommodation would be to not have to work at all.

During your pre-disciplinary interview on December 20,2017 you admitted that you are aware that you required to be regular in attendance. You also admitted that you are aware that the United States Postal Service is a $24 / 7$ operations and that working Sundeys and holidays is a requirement. You also admitted that the Postal Service has attempted to make an accommodation for you to report later than scheduled so that you can attend church services, however, you stated that is not reasonable and that you need the entire day off.

Your actions are in violation of, but not limited to the following:

## Employee and Labor Relations Manual

Section 665.13 Discharge of Duties
Employees are expected to discharge their assigned duties conscientiously and effectively.

Section 665.15 Obedience to Orders
Employees must obey the Instructions of their supervisors. If an employee has reason to question the propriety of a supervisor's order, the individual must nevertheless carry out the order and may immediately file a protest in writing to the official in charge of the installation or may appeal through official channels.

Section 665.16 Behavior and Personal Habits
Employees are expected to conduct themselves during and outside of working hours in a manner that reflects favorably upon the Postal Service. Although it is not the policy of the Postal Service to interfere with the private lives of employees, it

DISC G. Groff EIN:
does require that postal employees be honest, reliable, trustworthy, courteous, and of good character and reputation. The Federal Standards of Ethical Conduct referenced in 662.1 also contain regulations governing the off-duty behavior of postal employees. Employees must not engage in criminal, dishonest notoriously disgraceful, immoral, or other conduct prejudicial to the Postal Service. Conviction for a violation of any criminal statute may be grounds for disciplinary action against an employee, including removal of the employee, in addition to any other penalty imposed pursuant to statute. Employees are expected to maintain harmonious working relationships and not to do anything that would contribute to an unpleasant working environment.

Your failure to comply with these regulations warrants this action.
In addition, the following elements of your past record have been considered in arriving at this decision:

You were issued a Letter of Warning dated June 9, 2017 for Failure to be Regular in Attendance

This action is taken to impress on you that you must correct your work deficiencies and demonstrate adherence to postal regulations. Fallure to meet the above stated or other legitimate work expectations may result in further discipline, up to and including removal from the Postal Service. While you will not serve time off with this seven-day paper suspension, it has the equivalent degree of seriousness as if you had served time off without pay.

You have the right to appeal this action under the grievance/arbitration procedure set forth in Article 15 , Section 2 of the National Agreement within 14 calendar days of your receipt of this notice.


Brian Hess
Date:


Postmaster


Date: 111118
Keith Krempe (higher level concurrence) Manager, Post Office Operations

cc: Labor Relations
File
Barbara Callahan, NRLCA, District Representative, PO Box 392, Littz, PA 17543

DISC G Graf EIN:

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Exhibit "E"

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

| GERALD E. GROFF, | $:$ |
| :--- | :--- |
| $\quad$ Plaintiff, | $\vdots$ |
|  | $:$ |
| v. | $:$ CIVIL ACTION NO. |
|  | $:$ |
| MEGAN J. BRENNAN, | $:$ |
| POSTMASTER GENERAL, | $:$ |
| UNITED STATES | $:$ |
| POSTAL SERVICE, | $:$ |

## 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 $14^{\text {th }}$ day of February, 2020.
BY:


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## Exhibit ${ }^{66} \mathbb{F}^{99}$

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

GERALD E. GROFF,
vs.
megan J. brennan, POSTMASTER GENERAL, UNITED STATES POSTAL SERVICE,

Defendant
NO. 19-CV-1879 IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DI STRICT OF PENNSYLVANIA
Plaintiff

DEPONENT: BRIAN M. HESS

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

$$
\text { LOCATION: } \begin{array}{ll} 
& C \text { lymer, Musser \& Sarno, P.C. } \\
& 408 \text { West Chestnut Street } \\
& \text { Lancaster, PA } 17603
\end{array}
$$

Q. When did he start working at Holtwood?
 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

12
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?
A. There was two other RCAs.

Filed 02̛.14/2Ren Gagaldwh 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.

## 14

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
belief not to work on the entire day of Sunday; right?
A. Correct. 5:19-cv-01879-JL'S Document
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

32
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?

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
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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
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. Graf?
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?

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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
delivered during 2018 on those Sundays on the routes that Nile 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,

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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 --
Q. I'm not talking about peak season now. I'm talking about Cône feak season, whent smanaged 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 40

## 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
grapevine about a potential boycott of a Sunday, do you recatawhoryok heard that from? of 356
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
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
wanted to stay relatively close to his current location. So Harrisburg was out of the question from how $I^{\text {Doc }}$ in
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 cant 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.

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

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on paper, that this is a serious -- we're looking at this seriously, you're hot 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.

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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
there Sundays there that he missed? I'd have to see the paperwork and schateduilig.
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?

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, RCA that would be scheduled --
A. I can't answer --
Q. -- or was it anyone else?
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, l'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?
A. Correct.
Q. whyand?
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, l'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 52
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?

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 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
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 --
that's the only time I really interacted, when they gave me a questionnarestofititutil:cv-01879-JLS Document
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.

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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:
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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
knowledge, the Union did not take a position with respect to Fived.GYdf's situation? 293 of 356
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
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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 l'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?
eight hours per each date; correct?
A. Correct 5:19-cv-01879-JLS
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

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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:

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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
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
covered from ARCs and RCAs?
A. Correct. Arcs would be chosen first document 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 cant 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

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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.
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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 cant 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?

2 soilednever fad lo dough 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. Id 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. Graf not working a Sunday?

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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
to go and deliver on a Sunday?
A. No, Because thatrony job-as the Document $\$$ 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.
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## 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

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 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

## 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
under your supervision had, what we call, intermittent FMLA, which is to sasy instead of taking time off in pocument 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 100
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?
altogether?
A. She resigned to take a full-time job outside the Postal Service.
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
from you to the Postal Service that l'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 l'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

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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

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 Yes, because I was doing RCA rural camier work, but ifQ. 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
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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.
Q. That the work of the Post Office had to 1 be completed oneway or theother.
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 120
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.
Q. In all of your discussions with HR, with Labedrentitions abouthoossible af $350 \mathrm{mmodations}$, 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.

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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 l'd have to send a second or third e-mail to follow up until they would make
contact and verify with that RCA if they were willing to Case 5:19-cv-01879-JLS Document

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,

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## 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

Fir befo he begins to solicit and not fully Understand all the ramiffeations 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

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
page that's been Bate marked USPS 1966. This is an

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 152
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
timeline.
Filed 0Q14/R2ell, Pageu Woutd 356 it -- 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? 154
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?
A. I can't answer why Lancaster would -what their impetus beriñ the stry-ssing disciptine 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.

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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


ther Postmasters that they had lost people who did not want to work oh'sundags? 302 of 356
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.

## 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?

Sundays on his account?
A. Agans Pr have qo 180 k at the ${ }^{\text {LS }}$ 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, l've never experienced it, but l'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 200

## 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
follow-up questions.
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MS. FINKELSTEIN: Correct. (Short recess was taken.)<br>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?

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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

Exhibit "G"
IN THE UNITED STATES DI STRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GERALD E. GROFF, Plaintiff
vs.
megan J. brennan, POSTMASTER GENERAL, UNITED STATES POSTAL SERVICE,

Defendant
NO. 19-CV-1879 IN THE UNITED STATES DI STRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA


DEPONENT: LYLE V. GAINES

DATE AND TIME: Wednesday, December 18, 2019 at 2:05 p.m.

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

THE WITNESS: I have no knowledge of anyone trying to make an: exampiedfomr. Gloff. BY MR. REINACH:
Q. Were you involved in any discussions with management about RCAs calling off on Sundays and difficulties scheduling enough people to deliver Amazon delivery on Sundays?
A. I could have possibly had that conversation. Do I recall? Not offhand.
Q. Let's return to the conversation that you did have with Mr. Groff and with Brian Hess about Mr. Groff's accommodation. Do you recall what you discussed at that time?
A. One thing that I guess pretty much
sticks out in my mind is he mentioned something about the Sabbath. And to me, based on my studies, that can be considered a broad term because some people recognize the
Sabbath on different days, and I needed to understand exactly what he meant by that.

And he clearly explained it to me, and I think he made a Biblical reference to it and, you know, I understood what he -- what he was talking about. I don't really understand intricacies of the conversation or recall the intricacies, but that's one thing that stuck out to me because I wanted to get it right.

I admired his -- the communication that he had with me about his commitment to his faith. I respected that. There's one thing that I recognize is I don't doubt anyone's faith. That's like big for me. And I wanted to get it right.

I didn't want to deny him something that he wasn't entitled to, but I still have a responsibility to my position, and I couldn't let my faith skew my decision.
Q. Do you remember specifically what, if anything, was discussed about what he was looking for as an accommodation?
A. He didn't want to come to work at all on Sundays, as I recall. That's my recollection if I had to give you a response right now.
Q. That's correct. And were there any specific proposals about how that might be accommodated that you discussed with him?
A. I think, based on my recollection, the information that was shared with me from Mr. Hess as to what he was able to do that wouldn't impact operations because, you know, we have contractual requirements that we have to work within those parameters, as well. I believe he was willing to try and get volunteers to work on days when Mr. Groff was scheduled, when his name came time



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don't work, they will be subject to discipline the same


MS. DeBRUICKER: Objection.
BY MR. REINACH:
Q. -- as you already testified.
A. The requirement is to be regular in
attendance, and our contract requires that we consistently and equitably enforce the rules.
Q. So we've been discussing the status of non-career employees and the fact that, in this district, Sunday has been a consistent obligation such that, regardless of which craft, which position, individuals --non-career employees would sooner or later need to be working on Sundays -- would be scheduled on Sundays to be more precise.

I want to switch to, you know, Saturday is also observed as the Sabbath by many. Does the same hold true with respect to those who observe the Sabbath sundown Friday to sundown Saturday? Would they inevitably also -- as non-career employees here in the Central Pennsylvania District, would they also inevitably be scheduled to work in conflict with their Sabbath?

MS. DeBRUICKER: Objection to form.
THE WITNESS: Well, it's possible.
They're scheduled when they're scheduled. I mean, we
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don't schedule based on religious beliefs or faith systems. We schedule based on the needs of the operation.

And those employees are hired for that
specific reason. Non-career employees are meant to supplement the regular workforce. And when that need arises, they're scheduled for work and we expect them to report as scheduled. And like I said earlier, we expect them to make every effort to avoid unscheduled absences. An unscheduled absence is any absence that's not scheduled and approved in advance. BY MR. REINACH:
Q. Let me dig deeper on this because my understanding is that an RCA is specifically assigned to cover behind a career employee, a Rural Route Carrier, and to work when that carrier is off. Is that correct?
A. That's partially correct.
Q. So are the regular Rural Route Carriers -- is Saturday one of the days that they might have off?
A. That's possible.
Q. Do days off for the Rural Route Carriers rotate, or do they have fixed days off?
A. Well, it depends on how the route is set up. It might be a six-day route. It might be a five-day route. It depends. But, you know, the statement that

## 2

They're designed to cover several regular carriers when they're off because they have what's called a matrix, and they can be the primary on one route, the secondary on one route, and the tertiary on another route. So they can be covering three separate routes depending on the day off of the carrier that they're on the string, on the matrix.

And that's why I said the non-careers are designed to supplement the regular workforce, and they must be flexible in their scheduling and the amount of hours that they work.
Q. What I'm trying to determine -- and maybe you can just explain it to me simply -- is I gather that Sunday work is an issue for RCAs because of the contract with Amazon, that there's a lot of work delivering Amazon packages on Sundays. Saturday is a regular mail delivery day; correct?
A. Yes.
Q. Both the City Carriers and the Rural Route Carriers are generally off on Sundays, but they rotate through the rest of the week, either five or six days a week; right?
A. Yes.
Q. So what I'm trying to understand is would a Sabbath observer who's Jewish, who observes the Sabbath from sundown Friday to sundown Saturday here in the Central Pennsylvania District, would they have the same pressures, obligations to be available on their Sabbath as Mr. Groff has faced in being scheduled to work on Sundays?
A. I don't consider them pressures. I consider them a scheduling issue. If they're scheduled, just like Mr. Groff, they're required to work when scheduled. This is not based on, like I said before, an individual's personal life. It's based on the needs of the service as far as moving the mail and operational requirements.

We don't schedule people based on their personal life. We schedule people based on our need to move the mail for the American public. That's what we do.
Q. Well, I understand that, but you also understand the obligation the Postal Service has to provide reasonable accommodation for those who observe a Sabbath, for example; right?

MS. DeBRUICKER: Objection.
THE WITNESS: Yes.
don't schedule those absences in advance, they are held


Whether they went to the ball game like you just illustrated earlier, whether they went to the movies, whether they were actually sick, even when an employee is legitimately ill, unless that absence is covered by the Family Medical Leave Act, it's not protected from corrective action.
Q. Does it trouble you at all that Mr. Groff lost his job because of his insistence on observing his Sabbath and not working on this day?

MS. DeBRUICKER: Objection.
THE WITNESS: I want to answer your question. It troubles me when anybody loses employment. It legitimately troubles me when anyone loses employment.

I really admired Mr. Groff's decision to hold true to his faith. That's just my standpoint. But my beliefs are not based on -- my position with the Postal Service is not based on my beliefs. It's based on my obligation to uphold the handbooks and manuals that I oversee.
BY MR. REINACH:
Q. So switching gears slightly, if I understood your testimony a few minutes ago, if Mr. Groff had continued to hold to his belief and not work when

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scheduled on Sundays, depending upon what -- I think you used the term the threshold of the office, how many absences, unscheduled absences would then warrant the next step in discipline? At some point, if he continued to miss scheduled Sundays, his managers would send up a request for removal.

MS. DeBRUICKER: Objection.
THE WITNESS: That's a possibility.
BY MR. REINACH:
Q. Based on if he continued to miss
scheduled Sundays, sooner or later the request for removal would be submitted. He wouldn't be allowed to continue missing scheduled Sundays indefinitely, would he?

## MS. DeBRUICKER: Objection.

THE WITNESS: That would be based on the decision of the installation head.
BY MR. REINACH:
Q. So are you saying that his Postmaster had the discretion to simply permit him to miss scheduled Sundays and never issue the removal?
A. I'm not saying that his Postmaster had the discretion. I told you my testimony was that his Postmaster had a responsibility to control unscheduled absence in accordance with the ELM provisions. That's
his responsibility. Some people meet that respod oitbility, some dofft. 308 of 356

And just like I said, Mr. Groff's decision to take off or Mr. Groff's decision about his employment is his decision, which prompts the decision by the manager. And when his manager doesn't do what they're required to do based on a decision to act or not act, then the next higher level manager makes a decision about his employment.

It's just the nature of the handbooks and manuals because the ELM also requires under Section 372
sound supervision, which requires formal and informal consultations with individuals when they're not performing to the duties that they are being compensated for and required to do.
Q. So if I understand what you just told me, if Brian Hess, as Mr. Groff's supervisor, had allowed Mr. Groff to accumulate unscheduled Sunday absences without issuing him discipline, sooner or later Mr. Hess would have been subject to discipline for failure to carry out his own responsibilities?
A. That would be a possibility.

MS. DeBRUICKER: Objection.

## BY MR. REINACH:

Q. So assume for the sake of our discussion

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here that Mr. Groff held to his religious beliefs and continued to accumulate unscheduled Sunday absences after having received his 14-Day Suspension, and at some point management sends up to Labor Relations a request for a removal. Can you explain to me how Labor Relations would review and address that request for removal?
A. We would review all the documents just like we do any other. We would review all the documents just like we would any other request for removal to make sure it meets the test of just cause. And if it met that test, then we would -- we would prepare the removal action and submit it to the field with all the necessary attachments, giving the employee the reason for the removal based on the charge, the ELM or handbook and manual citations. And we would also give the employee their appeal rights, whether they had appealed to MSPB or to a grievance procedure.
Q. As you had earlier testified with respect
to other discipline, when it came to a decision concerning removal, the reason for Mr. Groff accumulating unscheduled Sunday absences, i.e., his religion, that's not a factor in the determination as to whether removal is appropriate. Is that correct?
A. Well, the reason would be -- the reason would be -- I always run ahead of the objection and I'm
trying to behave myself -- the reason would be that we would review the charges, wewouldidentity what Randmebk and manual was violated, and we would stick to those things.

It's never about why the employee took off. That's not the issue. That issue, whenever we write any type of corrective action, is based on our handbooks and manuals and the violation thereof. That's the only thing that's taken into consideration because that's the only way we consistently and equitably enforce the rule.
Q. Is there any intermediary step of corrective discipline between a 14-Day Suspension and a removal?
A. Our, what we call, progressive corrective action is a Letter of Warning, a 7-Day Suspension, 14-Day Suspension and then removal.
Q. Knowing the facts of Mr. Groff's situation, that he was not working scheduled Sundays on account of his religious belief, if that request for removal had come to you, would you have approved it?

MS. DeBRUICKER: Objection.
THE WITNESS: I make my review based on the documents that are presented to me, and I make my decisions based on the handbooks and manuals that I

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oversee, and I make that decision in accordance with the just cause principle like I previously stated.

It has nothing to do with the reason why an individual takes off. Either they're regular in attendance or they're not. I treat everyone the same. It doesn't matter the reason why.

The only reason why it would matter is if somebody made a false claim as to why they were off, and that's an even more serious offense. Like somebody calls off sick leave. I think I told you earlier. In order to use sick leave, you have to be incapacitated for duty. If you're seen at the baseball game jumping up in the stands, you have falsified an official document, which is a much more serious offense.

## But an accumulation of absences

demonstrates that you're not regular in attendance, and
it doesn't matter the reason why you were off. Everyone
that takes off believes that their reason is justifiable,
but it doesn't meet our attendance requirement.
BY MR. REINACH:
Q. Did you participate in any discussions with managers, either at the Lancaster Annex or Mr. Hess, Mr. Groff's direct report at Holtwood, about any undue hardships that might have resulted from his not working on Sundays?

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BY MR. REINACH:
Q. Well, if I understood your testimony earlier, his was the only religious accommodation request that you have been involved in in your term as Director of Labor Relations. And so do you remember any specific consideration, any specific hardships that were brought to your attention --

MS. DeBRUICKER: Objection.

## BY MR. REINACH:

Q. -- resulting from Mr. Groff's conduct? MS. DeBRUICKER: Objection. THE WITNESS: I can't recall offhand. BY MR. REINACH:
Q. Earlier we had some discussion about the phone conference that you had with Mr. Groff and with Mr. Hess. Following that phone conference where you were learning about Mr. Groff's religious accommodation needs, do you recall whether you took any action to determine what, if anything, could be done to accommodate him?
A. I don't recall the exact action that I
70
took. I do recall talking to Mr. Hess. I vaguely recall asking about the actions that he took so far as far as trying to accommodate him. And I believe that's where I got the information about allowing him to worship. That's all I really remember off the top of my head.
Q. Do you recall whether you looked to see if there were any transfer opportunities for him?
A. I don't recall whether I did or I
didn't.
Q. Did you have any discussion with him about his trying to find individuals to cover for him on the Sundays that he was scheduled?
A. That could have been a possibility, but I can't say -- I cant confirm whether I did or not.
Q. Well, both in the July 17th letter, Exhibit 3, and in this July 31st e-mail that's part of Hess Exhibit 1 you reference that Mr. Hess would be trying to find volunteers, but you made no mention of encouraging Mr. Groff to find volunteers on his own behalf; right?
A. Like I said, I can't confirm one way or the other.
Q. But you didn't identify that as a possibility either in your letter to him or in your e-mail here to Mr. Hess, did you?
the decision in Mr. Graf's case.
Q. Couldithavedeen after Mr. Goff hadcument already resigned?
A. I don't recall when.
Q. Do you recall whether that conversation factored into your decision?
A. No, absolutely not.
Q. Was there a specific document that required the Postal Service to schedule all the RCAs on Sunday?

MS. DeBRUICKER: Objection. You can answer.

THE WITNESS: There was a Memorandum of
Understanding as it relates to the pecking order for scheduling the Rural Carriers on Sunday Amazon. BY MR. REINACH:
Q. Did the MOU grant to RCAs any specific rights as far as seniority is concerned with respect to how they're scheduled for Sunday Amazon delivery?

MS. DeBRUICKER: Objection.
THE WITNESS: Well, the MOU is based on
the face of the document, and I did not have a chance to review it before I came today, and I was going to review it. But my understanding of the MOU is that the ARCs, they're scheduled first, then the volunteers, they're put

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in the rotation, then the non-volunteers, and then the
Rural Carriers in a leave earning capacity, they're quoted as 740s. And they just go on a rotation each week, and where you stop on the list, they start with the next employee for the following week, and they keep rotating. But the ARCs are always scheduled first before any employee is scheduled.
BY MR. REINACH:
Q. But that doesn't apply principles of seniority in the scheduling of Sunday Amazon delivery, does it?
A. I don't think I understand. What do you mean by principles of seniority in the scheduling?
Q. Well, when I think of seniority, for example, a Rural Route Carrier has an opportunity at some point to bid for a specific route --
A. Right.
Q. -- and a specific schedule based on their seniority. There might be several available, and they get to choose based on seniority.
A. Right.
Q. But here and with respect to Sunday

Amazon, seniority doesn't factor in. It's just a rotation.
A. It is a rotation, but different from


## list is set, whether they do it by alphabetical order,

 whether they do it by entered on duty date, whatever, how they set it up, once that list is set, it's set. And then you maintain that rotation based on the original establishment of the list.Q. So now I'm hearing you say that at the Lancaster hub you don't know whether they did it by alphabetical rotation or by enter on duty date.
A. No, I don't know. I don't know a thing.
Q. It strikes me, too, when it comes to enter on duty date, I do understand that when Mr. Groff transferred from Quarryville to Holtwood, he would have a different seniority date based on when he started at Holtwood. But now when he's being compared to all the RCAs around the Lancaster hub, if it were the enter on duty date, would it be the date that he started as an RCA at Holtwood or would it be the date that he started as an RCA within that hub area at Quarryville?
A. Is that a question?
Q. It is, if you know. Why would he then lose any sort of -- whatever.
A. I don't understand the question because it sounds like --
Q. Ill withdraw the question. So we're
talking still about Sunday delivery and the rotation of
of the individual employee like I previously stated. Employees are sckeduled based onthe heeds of thesemment and operational requirements. That's the bottom line.

They're not scheduled based on their needs first. The first thing is we schedule based on the needs of the service. That's the primary obligation under the leave provisions if leave is considered and scheduling is considered based on the needs of the service.

MS. DeBRUICKER: Counsel, if you're asking him questions about the MOU or the Collective Bargaining Agreement, it might be helpful to show him the document if you don't think the document speaks for itself.

MR. REINACH: I don't have any further questions.
BY MS. DeBRUICKER:
Q. Mr. Groff [sic], I have a few questions for you just to hopefully clarify a few things.
A. Okay, no problem.
Q. You discussed at different points of your testimony the accommodations that the Postal Service did offer or did its best to provide for Mr. Groff, and I think it would be helpful if we could clarify and list what those were.

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To the best of your recollection, what accommodations was Mr. Groff offered in response to his request not to work on Sunday?

MR. REINACH: Asked and answered, but you can go ahead.

THE WITNESS: Basically that we -- one, we would try and find volunteers for Mr. Groff so that he could be off to observe his accommodation that he requested, and if that was not possible, then we would allow him time to attend his religious services and be later scheduled that day.
BY MS. DeBRUICKER:
Q. Do you recall whether he was ever offered a different day for observance than Sunday?
A. A different day? I don't recall that part offhand.
Q. Was it the case that if a substitute was found, if a volunteer was willing to take that spot, then Mr. Groff would not be found absent when scheduled on a Sunday?
A. No. He would be scheduled off on that day when a volunteer was available to take his spot.
Q. There was some discussion about a possible transfer recognizing that there was some caveats to that.
A. Yeah. I don't really recall the transfer pait, but, you Rage 311 onf asked , today, I just didn't see how that would solve his issue as a non-career employee because no matter where he would obtain a transfer, he would find himself in the same situation possibly, almost definitely because they are a supplemental workforce and that's -- the supplemental workforce works on Sundays.
Q. You mentioned you spent three years at the seminary?
A. Yes, I did.
Q. Are you an ordained Minister?
A. Yes, I am.
Q. Was there ever any doubt as to the seriousness of Mr. Groff's religious convictions?
A. Never doubted it. I actually admired his convictions.
Q. Did you learn of Mr. Groff's religion prior to his request for accommodations?
A. My recollection is I learned about it through the -- what I call the interactive process by speaking to him because I didn't want to assume anything. That's why I asked him about the Sabbath day. And he identified that, based on the fourth Commandment, and I respected that.
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You know, l've had a lot of conversations
with individuals pertaining to the Sabbath because of, you know, my studies and the people that I have surrounded myself with, and I understand that people recognize the Sabbath in different ways.

You know, so l just needed to understand
Mr. Groff's request and, you know, his position as it related to the Sabbath. And I believe we had a very minimal conversation, but he was able to identify what his Sabbath was. He identified it as Sunday, and he identified it as it was a day of rest, and I respected that.
Q. Did you have any negative feelings at all regarding Mr. Groff's religion?
A. Not at all. I embrace the same religion. Like I said, I really admired his conviction. I admired his commitment to his faith and his belief about the Sabbath. You know, we all look at the Sabbath in different ways, but I still admired his conviction.
Q. Did you treat Mr. Groff any differently
after you learned of his religion and his beliefs?
A. Absolutely not.
Q. Did you treat Mr. Groff any differently
once he filed an EEO claim?
A. Absolutely not.

## Axhibit ${ }^{66}{ }^{\prime 9}$

posthl senvee
DATE: October 5, 2018
SUBJECT: Notice of 14-Day Paper Suspension (')

TO: Gerald Groff<br>EIN: 04128993<br>Rural Carrier Associate, Holtwood Post Office

You are being issued this fourteen (14) calendar day paper suspension (no-time-off) for the following reason (s):

## Unsathsfactory Attemdance

You have had the following unscheduled absences:

| $06 / 17 / 2018$ | 8.00 | Leave Without Pay |
| :--- | :--- | :--- |
| $08 / 12 / 2018$ | 8.00 | Leave Without Pay |
| $08 / 26 / 2018$ | 8.00 | Leave Without Pay |

During your pre-disciplinary interview (PDI) on September 6, 2018, when asked if you are aware that it is your responsibility to report to work promptly as scheduled, you answered yes. You also stated you were aware that it is a requirement for Rural Camer Associates to work on Sunday per the National Agreement. You stated that accommodations have been offered to adjust your schedule to allow you to attend your church services, but this accommodation was not reasonable.

Your failure to maintain regular attendance constitutes a violation of USPS Stardards of Conduct as expressed in the Employee and Labor Relations Manual (ELM), 665.41 Requirement of Regular Attendance, "Employees are required to be regular in attendance. Failure to be regular in attendance may result in disciplinary action, including removal from the Postal Service."

In addition, you are in violation of the ELM, Section 511.43, "Employees are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences. In addition, employees must provide acceptable evidence for absences when required."

The following elements of your past record have been considered in arriving at this decision:

Letter of Warning cated June 9, 2017 for Unsatisfactory Attendance
7-Day Suspension dated January 2, 2018 for Improper Conduct
This action is taken to impress on you that you must correct your work deficiencies and demonstrate adherence to postal regulations. While you will not serve time off with this fourteen-day paper suspension, it has the equivalent degree of seriousness as if you had served time off without pay. This action is intended to correct the deficiencies above and should be taken seriously. Future deficiencies will result in more severe disciplinary action being taken against you, up to and including, removal from the Postal Service.

[^5]Case Fidq-ive-P1879-JLS Document 36-2 Filed 02/14/20 Page 314 of 35 quige 2 of 2 in Article 15, Section 3 of fhe National Agremen the grievancelarbifration procedure set forth notes.



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\text { Date: } \frac{10 \cdot 12-18}{8.37 .42 n}
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Gerald E. Groff
Rural Carrier Associate
Holtwood, PA Post Office

January 14, 2019

Brian Hess
Postmaster
Holtwood, PA Post Office

Brian,
This letter is to serve as the official notice of resignation for my position as a Rural Carrier Associate with the United States Postal Service at the end-of-shift on Friday, January 18, 2019 (effective date of resignation to be January 19, 2019).

After much prayerful consideration, I have decided to pursue more rewarding work/service interests, as I have not been able to find an accommodating employment atmosphere with the USPS that would honor my personal religious beliefs (e.g. to not work on Sundays) while also allowing me to pursue a livelihood without harassment and/or threat of discipline or dismissal.

I apologize for any inconvenience this will cause both yourself and my co-workers, but I humbly remind you that I did faithfully remain on staff during the busy holiday season and beyond. I wish you the best, and thank you.


CC: David Crossett, Esq.

Case 5:19-cv-01879-JLS Document 36-2 Filed 02/14/20 Page 316 of 3 朁e 3.73

Gerald Groff<br>Rural Carrier Associate<br>Holtwood Post Office

Re: Details of Church Attendance

To Whom It May Concern,

I am writing to provide the details of my church attendance as requested by Labor Relations

Although I am not a member yet, I most regularly attend the Greenfield Campus of the Victory Church in Lancaster, PA. I typically go to the 8:00 AM or 9:30 AM service, although there is a third service at 11:15 AM on Sundays.

The church has a number of campuses, but the main Greenfield Campus is located at 1827 Freedom Road, Lancaster, PA 17601, and this is where I typically attend. One service is also broadcast on WJTL radio station and there is a live web broadcast.

As I stated above, I am not yet a member at Victory (which requires attending a class and making a commitment before the entire church at some point) but that is only because I am fairly new to this church since I only started attending there more regularly in 2017.

Respectfully,

Gerald Groff

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IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA
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GERALD E. GROFF, (
    V
                                NO. 19-CV-1879
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: \(\quad\) 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

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.
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

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
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

I N THE UNITED STATES DI STRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GERALD E. GROFF, Plaintiff
vs.
MEGAN J. BRENNAN, pOSTMASTER GENERAL, UNITED STATES POSTAL SERVICE,

Defendant
NO. 19-CV-1879 IN THE UNITED STATES DI STRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

                        dant
                    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
other ground rules -- I'm terrible about getting out all the ground rules.

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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

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

## attendance.

## Filed 02.14/2ight, Paupthat's not whatmy 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 l'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?

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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
the Sundays off; right?
A. Yes.ase 5:19-cv-01879-JLS Document
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?
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.

## BY MR. REINACH:

Filed 02214/20 mang days would and 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 l've lost track. BY MR. REINACH:

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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,
A. No.
Q. Theasemberof people that ybuneedeacu 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

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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都


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static, you could have made a route that has 120 packages bedause thothto thereg no threstold 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 $\mathbf{2 0}$ 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.

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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.

MR. REINACH: Objection. It calls for a
legal conclusion. Case 5:19-cv-01879-JLS Document 36-2 Filed 02/14/20 Page 328 of 356
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.)

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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

Exhibit "K" 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 

July 31, 2017
Certified \#: 70153010000028770472
Return Receipt Requested
Manager of Human Resources
Central Pennsylvania - 170 District, USPS
1425 Crooked Hil.t 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.

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NRLCA STEP 2 REPRESENTATIVE
Barbara M. Callahan
Po Box 392
Lititz, PA 17543
(717) 626-6329
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[^6]Case: 21-1900 Document: 24-2 Page: 474 Date Filed: 07/28/2021

UNPEESSTAFEESV-01879-JLS Document 36-2 Filed 02/14/20 Page 331 of 356 POSTAL SERVICE

USPS-NRLCA Joint Step 1 Grievance Form

4. Issue (Complaint)

Has Management wioloted the Notions Agreement by forcing me to maui an Sunday's an ollowng shans to k mot wank.
5. Contract Provisions (Articles at issue)

SEE ATTACHED PAGES (1):(D)
6. Full, Detailed Statement of Undisputed Facts (Attachments, as necessary)
see attached pages (i); (2)
7. Management's Full, Detailed Statement of Disputed Facts (Attachments, as necessary)

$$
\text { See A TAChe PA GE } 7
$$

8. Management Contentions

$$
\text { See a Trached lase } 7
$$

9. Union's Full, Detailed Statement of Disputed Facts (Attachments, as necessary)
SEE ATTACHED PAGES (1):(2):3):(4):6)
10. Union Contentions

$$
\text { SEE ATTACHED PAGES (D)(2) (3), (4) (5): } 6
$$

11. Remedy Sought by the Union

SEE ATtACHED PAGES $5 ; 6$


## 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, MOUSunday/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 Graf 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, Christian, 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, Strasbourg, 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 nonvolunteers.

## $P G(1) C M$ 7-31-2017 A2

Case 5:19-cv-01879-JLS Document 36-2 Filed 02/14/20 Page 333 of 356
22. Gerald Graf 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 - Christian 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 than 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

## $P_{G}(2) \mathrm{cm}$ 7-31-2017 $\mathrm{A}^{2}$

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 2000e16(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 statue, 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 $2000 \mathrm{e}(\mathrm{j})$. 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 minimus 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. Sd 126, 134-35 ( $1^{\text {st }}$ 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 statue would impose "undue hardship" as a matter of law. Nothing in the relevant provisions of Title VII either expressly or implicity 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 PG(3) cm 7-31-2017 AL

Case 5:19-cv-01879-JLS Document 36-2 Filed 02/14/20 Page 335 of 356

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 officewide 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

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Case 5:19-cv-01879-JLS Document 36-2 Filed 02/14/20 Page 336 of 356
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 Frisch 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 \# HOOT-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. Graf 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

## $P G$ (5) CM 7-31-2017 AL

Case 5:19-cv-01879-JLS Document 36-2 Filed 02/14/20 Page 337 of 356
they work and other relief carriers are not being forced to work according to the guidelines of the MOU.

PG (6) cm 7-31-2017 AZ
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 $9^{\text {th }}$ 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.

## PG (7) cm 7.31-2017 tL

# 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

October 3, 2017
Certified \#: 7006-2150-0002-6385-0221-
Return Receipt Requested
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:
PO and Zip: Lancaster, PA 17601
Finance \#:
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,
Burman alto
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

## 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: $\qquad$
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 RCA be regular in attendance for Sunday/Holiday Amazon. In essence, religious accomodation 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,



District Representative
National Rural Letter Carriers' Association

## Case 5:19-cv-01879-JLS Document 36-2 Filed 02/14/20 Page 341 of 356

## 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:"

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
1425 Crooked Hill Road
Harrisburg PA 17107-9704
(717) 257-2226
(717) 257-5512 Fax
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 "rrewarding] 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 Arbitràtor" 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

## -4.

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 ( $5^{\text {th }}$ 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,



# NATIONAL RURAL LETTER CARRIERS' ASSOCIATION 

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.

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

## UNITED STATES

November 20, 2017

## 17580127 <br> 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.


Billie D. Horton Date Labor Relations Specialist Eastern Area



Terry L. Miner Date NRLCA Representative
cc: District Office
2100 N. $13^{\text {nan }}$ STREET
READING, PA 18812-8997

Case: 21-1900 Document: 24-2 Page: 491 Date Filed: 07/28/2021
 POSTAL SERVICE 6
1a. Grievant's Name (Last, first, middle initial)
1b. Grievant's EIN (Employee Id Number) MCFadden Vince
1c. Grievant's Title. Designation Code, and Route No. RCA

1d. Telephone No. (include area code)

4. Issue (Complaint)

Has Manaqement wioloted the Notimel Aqpernent by forcing me to wave on Sunday's an ollowng othans to $k$ mot wank.
5. Contract Provisions (Articles at issue)
SEE ATACHED PAGES (1):(D)
6. Full, Detailed Statement of Undisputed Facts (Attachments, as necessary)
see attached pages (i): (2)
7. Management's Full, Detailed Statement of Disputed Facts (Attachments, as necessary)

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\text { See A TA ACheD PA GE } 7
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8. Management Contentions

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\text { See a thatched Pase } 7
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9. Union's Full. Detailed Statement of Disputed Facts (Attachments, as necessary)
SEE ATACHED 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)


# 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.


Cathy M/Perron
Manager
Contract Administration (NRLCA)
U.S. Postal Service


Date: $\qquad$

## 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, MOUSunday/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 nonvolunteers.

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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 than 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 2000e16(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 statue, 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 ( $1^{\text {st }}$ 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 statue would impose "undue hardship" as a matter of law. Nothing in the relevant provisions of Title VII either expressly or implicity 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 officewide 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.

## CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2021, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF System, which will send notice of such filing to all registered users.

Dated: July 28, 2021
/s/ Christopher E. Tutunjian
Christopher E. Tutunjian

No. 21-1900

## IN THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Gerald E. Groff, Plaintiff-Appellant, v.

Louis DeJoy, Postmaster General, United States Postal Service, Defendant-Appellee.

On Appeal from the United States District Court for the Eastern District of Pennsylvania
No. 5:19-cv-01879-JLS
Honorable Jeffrey L. Schmehl

## JOINT APPENDIX - VOLUME III OF III

PP. 527- 752

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

| GERALD E. GROFF, | $:$ |
| :--- | :---: |
| Plaintiff, | $\vdots$ |
| v. | $\vdots$ |
| MEGAN J. BRENNAN, | $\vdots$ |
| POSTMASTER GENERAL, UNITED | $\vdots$ |
| STATES POSTAL SERVICE, | $\vdots$ |
| Defendants, | $\vdots$ |

## 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 noncareer 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 parttime 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; Sheddy 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 nonpeak 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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## IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

## GERALD E. GROFF,

 Plaintiff,v.

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

No. 19-CV-1879

## :

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- No. 19 -

| $12 / 17 / 2019)$ |  |
| :--- | :--- |
| Judge Jeffrey L. Schmehl's Policies and Procedures | $179-183$ |

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10
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.

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1 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

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1 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

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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?
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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

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    moving.
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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

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remember.
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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

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    week for the Postal Service in 2014?
    A. I wouldn't remember.
    Q. I'm going to show you Exhibit 11.
    (Exhibit No. }11\mathrm{ 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
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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.

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    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
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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

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so much mail to deliver that there's additional mail
    aside from the regularly scheduled routes assigned to
    that post office?
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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?

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    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
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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.

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 else.

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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.

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THE WITNESS: I had nothing to do with the

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    writing of this form.
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    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

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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?
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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.

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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.

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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.

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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 Sheddy 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. Sheddy 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. Sheddy 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

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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

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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

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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

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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

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    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
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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.

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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?
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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?

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1 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?

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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?

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    A. My experience is it was handled
informally with Brian. That was my first time ever
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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?

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    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
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1 you were receiving a second pre-disciplinary interview
2 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?

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            A. I assume that to be true.
            Q. So by the time you had that
pre-disciplinary interview on October 3rd, 2017 with
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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

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    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\mathrm{ marked.)
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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?
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| 1 | A. True. |
| :---: | :---: |
| 2 | Q. So now I want to turn to 2018. In |
| 3 | 2018, you, for the first time, received a seven-day |
| 4 | paper suspension? |
| 5 | A. Yes. |
| 6 | Q. I'm showing you Exhibit 37. |
| 7 | (Exhibit No. 37 marked.) |
| 8 | BY MS. FINKELSTEIN: |
| 9 | Q. Bates 1927 through 1928, this is the |
| 10 | seven-day paper suspension that you received? |
| 11 | A. Yes. |
| 12 | Q. By that time we're in agreement that |
| 13 | you had actually missed 16 Sundays, correct? |
| 14 | A. Yes. |
| 15 | Q. However, this seven-day suspension only |
| 16 | Iists December 3rd and December 17th, 2017, correct? |
| 17 | A. True. |
| 18 | Q. This was given to you by Mr. Hess on |
| 19 | January 16th, 2018? |
| 20 | A. That's when I signed it, yes. |
| 21 | Q. And that's the day you signed it was |
| 22 | the date that it was given to you? |
| 23 | A. Yes. |
| 24 | Q. Now, Mr. Hess asked you to please |
| 25 | provide a written request for a reasonable accommodation |

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1 Whose handwriting is this?

2
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?

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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.
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Q. Eight, right?
A. Yeah.
Q. That's more than three?

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1 any of the three full-time career carriers at Holtwood 2 are going to retire or have a health impact that causes them to leave the job at Holtwood?
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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,

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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 401 K 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 401 k 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 --

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1 something that you were so worried about losing?
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

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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

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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
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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.

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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?

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1
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.

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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 bought 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?
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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.




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

GERALD E. GROFF, Plaintiff vs.

MEGAN J. BRENNAN,
NO. 19-CV-1879 POSTMASTER GENERAL, UNITED STATES POSTAL SERVICE, Defendant :

## DEPONENT: LYLE V. GAINES

DATE AND TIME: wednesday, December 18, 2019 at 2:05 p.m.

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

$$
\begin{gathered}
\text { BERKS COURT REPORTING SERVICE } \\
\text { By: Lori A. Dilks } \\
\text { Certified Court Reporter } \\
\text { 10 Fox Glen Drive } \\
\text { Sinking Spring, Pennsylvania } 19608 \\
\text { (610) 678-9984 } \\
\text { berkscourtreporting@gmail.com }
\end{gathered}
$$

## Case 5:19-cv-01879-JLS Document 37-2

LYLE V. GAINES
was called as a witness and, having been first duly affirmed by the Reporter-Notary Public, was examined and testified as follows:
BY MR. REINACH:
Q. Good afternoon, sir. I introduced myself prior to going on the record. Please do state your full name for the record.
A. Lyle Vincent Gaines.
Q. And you work for the Postal Service, do you?
A. Yes, I do.
Q. Can you state your job title?
A. Currently, I'm the Acting Postmaster of the Wilkes-Barre Post Office in Wilkes-Barre, PA.
Q. Thank you. Did you previously serve in Labor Relations?
A. Yes. I am currently the District Manager of Labor Relations, the Central Pennsylvania district. That's my Form 50 position. I'm just acting as the Postmaster of Wilkes-Barre.
Q. Have you ever given your deposition testimony before?
A. Yes, I have.
Q. So you're familiar with the process.

Just a couple of reminders. Please try to keep your voice up for the Court Reporter, and let's try not talking at the same time, which is probably harder for me than it is for you.
A. Okay.
Q. You understand that you just swore an oath, the same as if were in Court; right?

MS. DeBRUICKER: Objection. THE WITNESS: I affirmed.
BY MR. REINACH:
Q. I'm sorry. Yes, but you affirmed to tell the truth under penalty of perjury; correct?
A. That is correct.
Q. If I ask any questions that you find confusing or you don't understand, please let me know and I'll try to ask a better question. If you answer the question, I'm entitled to assume that you understood the question. Fair enough?
A. Correct.
Q. How long have you served in Labor

Relations?
A. I've been in Labor Relations since June 9th of 2003.
Q. How long have you worked for the Postal Plaintiff'sAppendix000055

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 on March 15th of 1986.Q. When you started with the Postal Service, what was your position?
A. I was hired as an LSM Clerk, a Letter Sorting Machine Clerk.
Q. Where did you work?
A. I started in Jamaica, New York, as a Jamaica GPO.
Q. And that's in Queens, is it not?
A. That is correct.
Q. Was that a full-time or a part-time position?
A. I started as a PTF Clerk.
Q. And at some point did you become full-time?
A. Yes, I did.
Q. Do you recall what year?
A. I don't recall the exact year I became
full-time, but l'd say about a year and a half.
Q. And how long did you work as a Clerk?
A. I entered into management in November ol 1991, approximately.
Q. And what was your position in managemer
A. Supervisor of Mails.
Q. Were you recruited to become a supervisor, or how did that come about?
A. I inquired about the position. I was an acting supervisor a short period before I became a Form 50 supervisor. I acted for a little bit prior to being promoted.
Q. When you say Form 50 , what is that?
A. Form 50 means that's your official position. A Form 50 is cut recognizing that you hold a particular position.
Q. When you were a supervisor, were you still in Jamaica, Queens?
A. I was actually promoted when I went to the Queens GMF, which is located on 20th Avenue and $t$ Whitestone Expressway.
Q. What was the next position that you had after the supervisor position there in Whitestone Expressway?
A. After the supervisor position there, I was laid -- I went through a reorganization in May of 1993 which prompted me to relocate to the Harrisburg area, and I became a supervisor of Distribution Operations.
Q. Was that at a distribution center there
A. In 4araisisuig? cV-01879-JLS Document $\$ 7-4$
Q. Yes.
A. Well, there's different levels of managers within the distribution center. There's a manager -- there's a Supenvisor of Distribution Operations. Above that is the Manager of Distribution Operations. Then there's a Lead Manager of Distribution Operations. Then there's a Senior Manager of Distribution Operations. And then there's a Manager of Mail Processing which is better referred to as the Senior Plant Manager.
Q. So that would be the top of the chain, the Senior Plant Manager?
A. Yes.
Q. So who was that in 2017?
A. Well, I think they went to about three
different ones. So to tell you exactly who it was, I really couldn't pinpoint it during that time. I can remember Roger Crawford being the Senior Plant Manager during that time. But you have to understand one thing, distribution and customer service are pretty much split. We don't report to the Plant Manager; we report to the District Manager, which oversees customer service, and the Plant Manager oversees plant operations.

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Q. So let's return to Mr. Groff's situation.

Mr. Groff was issued a Letter of Warning in June of 2017. Do you know whether you reviewed that before it was issued?
A. Me personally, no, I did not review it.
Q. Typically Letters of Warning would be reviewed by one of the specialists?
A. Well, typically, Letters of Warning are written in the local office unless they don't have the knowledge base to write a letter. And they would refer that to my office, and it would most likely be reviewed or written by one of my specialists.
Q. Got it. So shortly thereafter in July, do you recall a request for a 7-Day Suspension coming up to Labor Relations regarding Mr. Groff?
A. It's my understanding that he received several pieces of corrective action. Whether I reviewed them or not, I can't recall.
(Whereupon, the Reporter marked Gaines 1
for identification, Central PA District Discipline
Request.)
BY MR. REINACH:
Q. So we're showing the witness a two-page document that bears Bate Nos. USPS 1694 and 1695. Now, 1694 is an e-mail from Aaron Zehring, and it's directed Plaintiff'sAppendix000056

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## Filed 02A14/2es, Page 58 of 188

Q. It's dated July 6 of 2017. Ms. Kirchner was in HR at the time?
A. Yes. I was a direct report to Ms. Kirchner.
Q. Do you recall receiving this?
A. Do I recall receiving it? Not actually,
no, but it's possible. I'm not saying I didn't.
Q. But you're not recalling anything about seeing this Request for Discipline?
A. No. It's possible -- evidently, it did come to my inbox. Do I recall getting it or what I did with it? I couldn't tell you.
MR. REINACH: Let's go on to Exhibit 2. (Whereupon, the Reporter marked Gaines : for identification, E-Mail dated July 9, 2017.) BY MR. REINACH:
Q. I'm directing the witness's attention to Exhibit 2 bearing Bate No. USPS 1701. This is an e-mail from Lyle Gaines to Aaron Zehring dated July 9 of 2017. Do you see that?
A. Yes, Ido.
Q. And the subject says Gerald Groff?
A. Um-hum. Yes. I'm sorry.
is
Q. So the text says: I'm returning your request for a 7-Day for Mr. Groff for the following reasons. You need to call me immediately. Thanks. Do you recall what position Aaron Zehring had in July at the time you sent this e-mail?
A. To the best of my understanding, Mr. Zehring was the Manager of Customer Service at that time at the Lancaster Post Office.
Q. I believe you're correct. And Douglas French was copied. Do you recall his position?
A. His position was the Postmaster of Lancaster.
Q. So when you say, I'm returning your request for a 7-Day, what does that mean?
A. It means that he requested a 7-Day

Suspension for Mr. Groff, and I was returning it for the following reasons. I don't recall what those reasons were, but based on my e-mail, that's why I was returning it, and I asked him to call me immediately.
Q. Well, when you say you were returning it, does that mean that you're returning something for him to issue discipline, or you're not -- you know, you're kicking it back that you're not prepared to issue the discipline yet?
A. Well, based on the scope that I have in
the request woulabethe hooimeatimatines 1Dathismsat $3 \mid 7-24$ Request For Corrective Action.
Q. Right.
A. And I wasn't returning the actual letter that was written based on the request. I was returning the actual request based on the scope that's in front of me right now. I don't recall exactly why I was returning it. But based on this e-mail, I was returning the request for a 7-Day for Mr. Groff. For what reason I don't recall.
Q. Just so I'm clear on the sequence and what was happening, earlier you said that the local office generally would issue Letters of Warning --
A. That's correct.
Q. -- without input and supervision from Labor Relations unless they needed it.
A. Exactly.
Q. But when it came to a 7-Day Suspension, typically, those would be reviewed or even drafted by Labor Relations?
A. Typically, yes. 7-Day and 14-Days would be drafted and removals would be drafted by my office. Sometimes, based on the volume of requests that we get, I may write a letter from time to time, but normally my

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staff of specialists would write corrective action above the Letter of Warning. And in some cases, the field may even write letters above a Letter of Warning based on their knowledge of writing corrective action.

Normally, I would only review removals prior to them being issued to the field after they're written by the specialist, and in some cases I would write removals myself.
Q. So did Mr. Groff's case come to you as Director because it was involving religion?
A. Well, the only reason why I would say this request came to me -- because Mr. Zehring would always send his requests to me because he knew I would expedite whatever request he had.

Under normal circumstances and -- he would send a lot of requests to me. You know, we had a pretty good working relationship. He'd help me out, you know, if I needed something done, and I'd help him out. But a lot of people send stuff to me, but, you know, sometimes I would handle it myself, sometimes I would push it to one of my specialists, you know.
Q. When you say with this e-mail that you're returning the request, does that mean that you're not prepared to issue the 7-Day Suspension just yet?
A. Not necessarily. I could return a

Like, for example, this document under Gaines 1 , this is not a complete request because I think there should be another page. As you can see, it's marked Page 1 at the bottom left so it may be missing a document that will enable me to complete the request the was made from the field.

So there's several reasons why a request would be returned.

MR. REINACH: So we're going to double-check what the next page in the sequence is. It's certainly not my intent to show you a partial document. Let's go off the record for just a second.
(Discussion was held off the record.)
BY MR. REINACH:
Q. So we're back on the record, and we've added as Page 3 of Exhibit 1 the heretofore missing second page of the Request for Discipline, Bate numbere USPS 1696. And have you had an opportunity to review this page, sir?
A. Just now, yes.
Q. So does that help with your recall as to why you might have returned the Request for Discipline?
A. I don't recall the event. I mean,
anything that I would offer as testimony today would be based on speculation.
Q. Well, speculation is the one thing that we don't want.
A. No, we don't want that.
Q. If you can estimate something, that's allowed, but speculation is not helpful.
A. No, it's not.
Q. Sure. You see that Mr. Zehring had reported to you three absences, failing to report for work for Sunday Amazon, one in May, one in June and o। in July, and a prior LOW, Letter of Warning. Do you see that?
A. Yes.
Q. Now, the record in this case shows that he was not issued the 7-Day Suspension that Mr. -- Mr. Zehring requested one here in July of 2017. He was eventually issued one in January of 2018 based on different dates than the dates listed here.

And my question to you is whether you car shed some light on why during 2017 he was not finally issued a 7-Day Suspension.

MS. DeBRUICKER: I'll object to the testimony and the form of the question. You can answer if you are able.
or why not. Case 5:19-cv-01879-JLS Document 37 - 2 BY MR. REINACH:
Q. Do you recall whether he had filed an EEO in respect to the Letter of Warning?
A. I don't recall. I believe -- my recollection tells me that an EEO was filed. I believe I remember filling out an Affidavit, but I can't recall what the EEO was in connection of.
Q. What impact, if any, would his having filed that EEO have on the issuance of subsequent discipline?
A. It shouldn't have any impact.
Q. So the Postal Service would not necessarily delay further issuance of discipline simply because he filed an EEO?
A. I don't see how the EEO should have any impact on any decision that the Postal Service makes.
Q. Well, except, hopefully, some decision about how to resolve the EEO, but it --
A. I don't think that was the question.
Q. No, it wasn't, but certainly, if I understand your testimony, it's that Mr. Groff's filing of the EEO would not impact decisions as to whether subsequent discipline was appropriate.
A. Well, as a general sense, an EEO should not have an impact on any decision that anyone makes in the Postal Service. Whether you're asking me about the a decision someone else made, I can't answer that question.
Q. But to the extent that you were involved
in supervising the issuance of any discipline, the existence of outstanding EEOs would not impact any of your decision-making?
A. My decision-making, no.
Q. At some point, do you recall having a phone conference with Mr. Groff concerning his wanting religious accommodation?
A. I believe I did have a conversation with

Mr. Groff. Yes.
Q. Do you recall whether it was in person or on the phone?
A. A phone conversation. It was on the phone.
Q. Yes. I'm just clarifying. You said you had a --
A. All right.
Q. Was anyone else on the call?
A. I believe Mr. Hess was on that call based on my recollection. Yes.
Q. When someone requests religious

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A. Well, I have a conversation with the individual of any request for accommodation, whether it be a physical, mental or religious accommodation in this particular case. Like I said, this was a very rare request for me.
Q. Sure.
A. But, yeah, I need to talk to the individual so $I$ can get a better understanding of what they're seeking as an accommodation.
Q. Well, there's a difference between disability and religious accommodations in respect to disability has a formal requirement, Legal requirement of the interactive process; right? So you have an interactive meeting to explore the various issues involved with providing a disability accommodation; right?

MS. DeBRUICKER: Objection. You can answer.

THE WITNESS: Is that a question or is that a statement? I'm just not -BY MR. REINACH:
Q. Well, you're familiar with the requirements for an interactive process meeting for
disability accommodations; right?
A. Yes, Iam.
Q. So within the Postal Service, was there a policy or practice that a similar type of meeting should take place if someone requested a religious accommodation?
A. Well, based on my recollection, I believe once I received the request, I did seek Legal Counsel in the matter, and I believe I was advised at that time.

MS. DeBRUICKER: I'll ask you not to share anything that you were advised by Legal Counsel. THE WITNESS: Okay.
BY MR. REINACH:
Q. Do you know whether your conference cal with Mr. Groff and Mr. Hess was the first time that he had been engaged by management in a discussion of hi: religious accommodation?
A. I don't recall.
Q. In your understanding, did the fact that his not working scheduled Sundays was on account of religion, did that factor in to how decisions should be made with respect to his discipline?
A. I don't think I understand the question.

Can you repeat it?
A. Ofeqye 5:19-cv-01879-JLS Document $37-24$
Q. In terms of the decision-making process whether to discipline Mr. Groff for not working scheduled Sundays, did the reason he didn't work, his religion, was that a factor that the Postal Service took into account?
A. Well, I didn't make that decision, so I can't speculate as to what factors were taken into account when that decision was made.
Q. Do you know who made the decision?
A. Well, based on this request to me, it would have had to be Mr. Zehring and concurred by Mr. French. But other than having documents in front of me, I couldn't tell you who made the decision to take corrective action against Mr. Groff.
Q. So we can certainly look at the actual

7-Day Suspension and 14-Day Suspension, whatever the deciding officials who are listed there, you're saying those would be the ones who made the decision?
A. Yes. Whoever took the action made the decision.
Q. So I guess I need to have you explain a little more precisely when a request is submitted to Labor Relations, what role Labor Relations has in making the decision to issue that discipline.
A. Labor Relations doesn't make decisions as it relates to taking corrective action. How the process goes is the individual would bring whoever it is that they're taking corrective action against into what's called an investigative interview, as part of just cause under the contractual provisions of each particular craft. They would ask them questions about it, and there's several tests for just cause.

The contract states that no employee may be disciplined or discharged except for just cause. Just cause is framed by Arbitrator Carol Dougherty's Enterprise Wire decision, and there are several tests that you must meet in order to establish just cause.

When that case goes to arbitration, the arbitrator usually makes a decision based on the parties establishing just cause to take that corrective action. We usually review the request for corrective action to see if it meets the test of just cause, and then we write the corrective action and send it back to the field.
Q. So you're reviewing the request for a 7-Day or a 14-Day Suspension to see if it meets the test for just cause?
A. Right.
Q. You understood that Mr. Groff was issued both a 7-Day and a 14-Day Suspension from the Postal Plaintiff'sAppendix000059
 corrective action. Do I recall what was actually issued? Today I could not tell you that.
Q. So l'm going to show you what have previously been marked into evidence as Hess Exhibit ، and Hess Exhibit 3, 7-and 14-Day Suspensions.
A. (Witness reviewed documents.)
Q. When you were testifying a moment ago that Mr. Groff --
A. Can I just have a minute to review these?
Q. Certainly. I'm sorry.
A. (Witness reviewed documents.)
(Discussion was held off the record.)
BY MR. REINACH:
Q. So you referred a few moments ago to corrective action that was issued to Mr. Groff.
A. Yes.
Q. The exhibits that we've presented to you, the 7-Day and 14-Day Suspensions, are those the corrective action that you were referring to?
A. Whether --

MS. DeBRUICKER: I'll object to form.
You can answer it.

THE WITNESS: Whether these particula
actions -- all I recall is corrective action was taken.
Whether it was these two -- and I can only assume that these are the actions that were taken.
BY MR. REINACH:
Q. Because you don't recall specifically what corrective actions were taken?
A. No, I don't recall offhand.
Q. But these are considered corrective actions?
A. Yes, they are. They're considered 7and 14-Day Suspensions.
Q. Do you know whether your office, you personally or one of the specialists, had a role in drafting these?
A. Most likely someone from my office had a role in drafting these two letters.
Q. And does that mean that someone in you office would have reviewed the grounds in light of the just cause requirement?
A. I'm not sure if I understand the question, but they reviewed the documents that were presented to them by the requesting individual, and the wrote these actions based on the documents that were provided to my office. And if they needed further
requesting officiafagetineinfotmationimbder tocument $\$ 7-4$ provide the corrective action that's in front of me right now.
Q. If the specialist reviewing this proposed discipline had questions as to whether there was sufficient cause to issue the discipline, what would they do?
A. They would contact the office and return
it.
Q. Was it part of your role as Director of Labor Relations to provide training to the specialists that served under you?
A. Well, all of my specialists, they've taken a basic labor relations course at the Bolger Center for Leadership Development in Potomac, Maryland, and they also took an advocacy course at the same location.

Sometimes it's offered in Pittsburgh, but the basic labor relations course is offered at the Bolger Center for Leadership Development.
Q. In determining whether there was just cause to issue these disciplines, would it have been appropriate for them to take into account the reason why Mr. Groff was not working the scheduled Sundays, which is to say his regarding Sunday as the Lord's day?
A. Could you repeat the question?
Q. The Labor Relations specialists who were
reviewing and preparing these disciplines, they're presented with evidence that Mr. Groff did not work scheduled Sundays delivering for Amazon. And in preparing the disciplinary write-ups, is it appropriate for them to take into account the religious reason why Mr. Groff could not work the scheduled Sundays?

MS. DeBRUICKER: Objection to the form. You can answer.

THE WITNESS: Based on the documents that are in front of me, the corrective action was taken based on the violation of the specific articles of the Employee and Labor Relations Manual that the individual requesting the corrective action identified Mr. Groff as violating. BY MR. REINACH:
Q. That's true, but it doesn't answer my question. So if you'd take a look, for example, at Exhibit 4.
A. (Witness complies.)

Okay.
Q. The charge of improper conduct says --
the second sentence -- well, I'll read the first two sentences.

On December 3, 2017 and December 17,
Plaintiff'sAppendix000060

Eileóo $214 / 20$ Yage 62 áf 188 Silnday Ahazion. Yourfepeatedyrefused to work any of th Sundays that you are instructed to work. You have stated that you are aware of the requirement to work Sundays anc refuse because you are a Christian and it should be respected that no work should be done on a Sunday, et cetera.

So it's clear that he's being issued discipline because he failed to work when scheduled on Sundays, and the reason he failed to work was because of his religion.

Now, you earlier testified that one of the roles of Labor Relations is to determine whether the grounds for discipline meet the just cause standard; right? So what my question to you is, whether the information that the reason Mr. Groff didn't work Sundays was because of his religion, whether that is something that your specialists in Labor Relations should be taking into account in making the decision whether the discipline is appropriate, whether it meets the just cause standard.

MS. DeBRUICKER: I object to the preamble and to the form of the question. You can answer if you are able.

THE WITNESS: Well, maybe it might help
you understand what our review entails as far as just cause. Just cause says there has to be a rule. The employee has to be aware of the rule. The rule has to be consistently and equitably enforced. The rule should meet the severity of the infraction. The rule should be enforced timely, and it should be consistent with what others are disciplined for or corrective action taken for the same violation.

Now, based on what l'm seeing in front of me, reading the same paragraph it says, attempts have been made to accommodate your religious beliefs and alloו you to come to work later than other employees so that you may attend Church services on Sunday. You still refuse to comply.

Now, when I look at this document, even though I may or may not have authored the actual document, it says he didn't follow the instructions of the supervisor, was to report as scheduled, basically, and he's expected to discharge his duties like any other employee.

So while the instruction was given, he was required to follow the same expectations of other employees. He was treated the same as other employees. But it looks like attempts were made to accommodate him based on his religious beliefs, and all those attempts
just like every otheresippleyde.CV-01879-JLS Document 37-24
And those other employees who failed to be regular in attendance, corrective action is taken against them in the same manner.
BY MR. REINACH:
Q. I'm going give you a hypothetical that may help to clarify what l'm trying to get at. You have two employees who miss a series of Sundays that they're scheduled to work, and they're both being considered for discipline. One of them reports that he went fishing every Sunday, and the other one reports that he was in Church every Sunday.

Does it matter, when it comes to issuing discipline, whether someone was fishing on Sunday or whether they were in Church?

MS. DeBRUICKER: Object to the
hypothetical. You can answer if you are able.
THE WITNESS: Yes -- well, let me say it
this way. It would matter based on the type of leave they requested for that absence. It would matter based on the type of leave they requested.

For example, if either one of the employees requested sick leave and they engaged in activities other than being incapacitated for duty, both 40
employees would be -- corrective action could possibly be taken.
BY MR. REINACH:
Q. So you're changing my hypothetical a little bit, so I'm going to change it just a little bit more --
A. Okay.
Q. -- where there are requests because Mr.

Groff did make a request not to work on Sundays. So you have in the hypothetical one RCA who asks not to work on Sundays on account of their observance of the Lord's day. And you have a second RCA who asks not to work on Sundays because their kid is in Little League and playing baseball every Sunday. And so both of them, even though they're scheduled, even though they're not granted leave, they pursue their other activities outside of work and they are presented for discipline.

So the question is, is the reason why
they were absent, in one hand Little League for their kid and the other hand worship and religion, are those factors that the Postal Service considers when making the decision to issue discipline?

MS. DeBRUICKER: Objection. You can
answer.
THE WITNESS: No. They have a

## Eikadaythhat they masinake everfleffort to avoid an

 unscheduled absence.We have employees who have received
corrective action even for legitimate absences as it relates to being incapacitated for duty. As long as they're not regular in attendance, regardless of the reason, they still can face corrective action for not being regular in attendance.
BY MR. REINACH:
Q. So if I understand the discipline policy and practice, it applies equally to everybody regardless of the reason for their absence?
A. Exactly.
Q. And so with respect to religion, the policy is neutral. It doesn't prefer religion, it doesn't punish religion, religion is not taken into account?
A. Well, it's not meant to punish anyone. It's meant to correct the behavior.
Q. I understand that, so let me ask you some questions about that. In this case, Mr. Groff's not working on Sundays is on account of his religious belief. And you testified earlier that you have some education with respect to religion, and so I trust you're familiar
with that belief and with that practice. Is that correct?
A. That is correct.
Q. How do you understand corrective action in Mr. Groff's circumstance when the action that needs to be corrected is religious in nature?
A. I don't think I quite understand the question.
Q. Well, he's not working on Sundays because of his religion, so how does corrective action apply to that? What is it that the Postal Service is seeking to accomplish by issuing him corrective action?

MS. DeBRUICKER: Objection. You can answer.

THE WITNESS: The only thing the Postal
Service is trying to accomplish is that employees be regular in attendance and that they make every effort to avoid unscheduled absences. Nothing more, nothing less. And that applies to all employees.
BY MR. REINACH:
Q. Did you ever become aware whether management was trying to make an example out of Mr . Groff?

MS. DeBRUICKER: Objection. You can answer.
anyone trying to make an: exambreifni-droft. Document 37-24 BY MR. REINACH:
Q. Were you involved in any discussions with management about RCAs calling off on Sundays and difficulties scheduling enough people to deliver Amazon delivery on Sundays?
A. I could have possibly had that conversation. Do I recall? Not offhand.
Q. Let's return to the conversation that you did have with Mr. Groff and with Brian Hess about Mr. Groff's accommodation. Do you recall what you discussed at that time?
A. One thing that I guess pretty much sticks out in my mind is he mentioned something about the Sabbath. And to me, based on my studies, that can be considered a broad term because some people recognize the Sabbath on different days, and I needed to understand exactly what he meant by that.

And he clearly explained it to me, and I
think he made a Biblical reference to it and, you know, I understood what he -- what he was talking about. I don't really understand intricacies of the conversation or recall the intricacies, but that's one thing that stuck out to me because I wanted to get it right.

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I admired his -- the communication that he had with me about his commitment to his faith. I respected that. There's one thing that I recognize is I don't doubt anyone's faith. That's like big for me. And I wanted to get it right.

I didn't want to deny him something that he wasn't entitled to, but I still have a responsibility to my position, and I couldn't let my faith skew my decision.
Q. Do you remember specifically what, if anything, was discussed about what he was looking for as an accommodation?
A. He didn't want to come to work at all on Sundays, as I recall. That's my recollection if I had to give you a response right now.
Q. That's correct. And were there any specific proposals about how that might be accommodated that you discussed with him?
A. I think, based on my recollection, the information that was shared with me from Mr. Hess as to what he was able to do that wouldn't impact operations because, you know, we have contractual requirements that we have to work within those parameters, as well. I believe he was willing to try and get volunteers to work on days when Mr. Groff was scheduled, when his name came Plaintiff'sAppendix000062
 time.

And he really -- I got the impression he was genuinely trying to work with Mr. Groff and also meet his operational requirements to move the mail. And that's my recollection of the events as they occurred.

MR. REINACH: Let's mark this as our next
Exhibit.
(Whereupon, the Reporter marked Gaines 3
for identification, Letter dated July 17, 2018.)
BY MR. REINACH:
Q. So we have provided Exhibit 3 to the witness. It bears the Bate No. P001. It's a letter dated July 17, 2018. Is that your signature at the bottom, sir?
A. Yes, that is.
Q. Did you draft this letter?
A. Yes, I did.
Q. And you wrote to Mr. Groff?
A. Yes, I did.
Q. This is in July. Do you remember how
long or when you had the phone conference with him?
A. I don't recall the exact date prior to
writing this letter.
Q. If I told you that earlier testimony suggested it was in March, in late March, does that help with your recollection?
A. For some reason I recall we had more than one conversation, but I can't say for sure. But this letter was based on a conversation prior to me writing the decision. I don't know if I had a conversation with Mr. Hess and then a conversation with both of them, but for some reason I recall two conversations, but I can't specifically recall having two conversations with Mr. Groff.
(Discussion was held off the record.)
BY MR. REINACH:
Q. In the letter I don't see any reference
to discussion of transfer opportunities, whether in an effort to accommodate Mr. Groff's desire not to work on Sundays, whether you two had discussed a possible transfer. Do you recall whether there was any discussion of the possibility of transfer?
A. I don't exactly recall that. It's a possibility. But you have to understand the classification of employee that Mr. Groff was at that time, he would still possibly be subject to the same requirements to work on Sunday.
 someone?

MS. DeBRUICKER: Objection.
THE WITNESS: I don't think I understand the question. What do you mean by that? BY MR. REINACH:
Q. So if you're in a small office and you want to be off on a Sunday, there are fewer people who might be scheduled to cover for you than if you're in a large office with a lot more people; right?
A. Well, like I said, based on the classification of employee he was, he was still -whether he's in a small office or a large office, he would still be required to be in the rotation and eventually there would be a requirement to work Sunday.

So I don't see how that would help him as far as a transfer is concerned because it would even take him longer to become a career employee where he wouldn't have to work on Sunday because he would have to start all over with a new period of seniority.
Q. This letter is dated July of 2018, and Mr. Groff started with the Postal Service in 2012. He had already been working approximately six years.
A. That is correct.

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Q. And he was at a point, even after six years, where you're saying there was no place for him to work where he would not have to work on Sundays?
A. Based on his category of status as an RCA, his category of employment, the chances of him working on Sundays would be 99.9 percent whether he went from the Rural Carrier craft, City Carrier craft or the Clerk craft or the Mail Handler craft. Whether he was a Rural Carrier, a City Carrier, a Clerk or a Mail Handler, starting as a non-career employee, he would be required to work various hours, various days and various schedules. That's just the nature of the non-career position in the Postal Service.
Q. In this time frame, 2017, 2018, when Mr. Groff is being subjected to discipline, at least with respect to the Central Pennsylvania District where you were employed, were all newly hired employees of the Postal Service -- did they all begin as non-career employees?

MS. DeBRUICKER: Objection.
THE WITNESS: I can't speak for all, but I would say a great deal. There are very rare exceptions where an employee would come in as a PTF, which is considered a career position. I don't know if that occurred during that period. I don't know of any. So my Plaintiff'sAppendix000063

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We do have a category of PTF, but I don't know of anyone that came in as a PTF during that period. All of the hires that I saw, because I was on the complement committee and I've never seen a career employee hired, even beyond when Mr. Groff started his employment.
BY MR. REINACH:
Q. So you're saying since 2012 you're not aware of anyone being hired into a career position?
A. That is correct.
Q. Here in the Central Pennsylvania District?
A. In the Central Pennsylvania District.
Q. So is it fair to say that any individual whose belief is that they don't work on Sundays because it's the Lord's day, really should not try to apply to work for the Postal Service because they won't be able to keep Sunday as the Lord's day?

MS. DeBRUICKER: Objection.
THE WITNESS: I don't find that to be an accurate statement because I believe in the Lord's day and I work for the Postal Service. So I believe that that's a personal decision. I believe that's based on an 50 individual belief. And we all are individuals, and we make individual decisions.

The Postal Service doesn't discriminate based on race, religion, national origin. It doesn't discriminate, but we provide equal opportunity employment. That's what we do.

And individuals make decisions based on their personal beliefs. They make decisions based on their individual lifestyles. There's a lot that goes into that decision-making process, so I don't believe that -- I don't believe that statement to be true. BY MR. REINACH:
Q. Well, so individuals whose belief is not to work on Sundays, they can get hired by the Postal Service here in the Central Pennsylvania District, but if they're going to work for the Postal Service here, they're going to work on Sundays regardless of their belief. Isn't that true?

MS. DeBRUICKER: Objection.
THE WITNESS: No, I don't believe that to be a true statement either. They will be scheduled on Sunday. Whether they work or not is an individual decision.
BY MR. REINACH:
Q. Okay. I understand that. And if they

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## BY MR. REINACH:

Q. -- as you already testified.
A. The requirement is to be regular in attendance, and our contract requires that we consistently and equitably enforce the rules.
Q. So we've been discussing the status of non-career employees and the fact that, in this district, Sunday has been a consistent obligation such that, regardless of which craft, which position, individuals --non-career employees would sooner or later need to be working on Sundays -- would be scheduled on Sundays to be more precise.

I want to switch to, you know, Saturday is also observed as the Sabbath by many. Does the same hold true with respect to those who observe the Sabbath sundown Friday to sundown Saturday? Would they inevitably also -- as non-career employees here in the Central Pennsylvania District, would they also inevitably be scheduled to work in conflict with their Sabbath?

MS. DeBRUICKER: Objection to form.
THE WITNESS: Well, it's possible.
They're scheduled when they're scheduled. I mean, we
don't schedule based on religious beliefs or faith systems. We schedule based on the needs of the operation.

And those employees are hired for that specific reason. Non-career employees are meant to supplement the regular workforce. And when that need arises, they're scheduled for work and we expect them to report as scheduled. And like I said earlier, we expect them to make every effort to avoid unscheduled absences. An unscheduled absence is any absence that's not scheduled and approved in advance.
BY MR. REINACH:
Q. Let me dig deeper on this because my understanding is that an RCA is specifically assigned to cover behind a career employee, a Rural Route Carrier, and to work when that carrier is off. Is that correct?
A. That's partially correct.
Q. So are the regular Rural Route Carriers
-- is Saturday one of the days that they might have off?
A. That's possible.
Q. Do days off for the Rural Route Carriers rotate, or do they have fixed days off?
A. Well, it depends on how the route is set up. It might be a six-day route. It might be a five-day route. It depends. But, you know, the statement that
toicover the regular caquer 6 hef the 8 re off, they're not just not designed to cover the regular carrier. They're designed to cover several regular carriers when they're off because they have what's called a matrix, and they can be the primary on one route, the secondary on one route, and the tertiary on another route. So they can be covering three separate routes depending on the day off of the carrier that they're on the string, on the matrix.

And that's why I said the non-careers are designed to supplement the regular workforce, and they must be flexible in their scheduling and the amount of hours that they work.
Q. What l'm trying to determine -- and maybe you can just explain it to me simply -- is I gather that Sunday work is an issue for RCAs because of the contract with Amazon, that there's a lot of work delivering Amazon packages on Sundays. Saturday is a regular mail delivery day; correct?
A. Yes.
Q. Both the City Carriers and the Rural Route Carriers are generally off on Sundays, but they rotate through the rest of the week, either five or six days a week; right?
A. Yes.
Q. So what I'm trying to understand is would a Sabbath observer who's Jewish, who observes the Sabbs from sundown Friday to sundown Saturday here in the Central Pennsylvania District, would they have the same pressures, obligations to be available on their Sabbath as Mr. Groff has faced in being scheduled to work on Sundays?
A. I don't consider them pressures. I consider them a scheduling issue. If they're scheduled, just like Mr. Groff, they're required to work when scheduled. This is not based on, like I said before, an individual's personal life. It's based on the needs of the service as far as moving the mail and operational requirements.

We don't schedule people based on their personal life. We schedule people based on our need to move the mail for the American public. That's what we do.
Q. Well, I understand that, but you also understand the obligation the Postal Service has to provide reasonable accommodation for those who observe Sabbath, for example; right?

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MS. DeBRUICKER: Objection.
THE WITNESS: Yes.
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BY MR. REINACH:
Q. So What do you understand - Jand I'mhdument asking you for a legal conclusion, but what is your understanding of the Postal Service's obligation to provide accommodation for someone who observes a Sabbath, whether it's a Saturday Sabbath or a Sunday Sabbath?

MS. DeBRUICKER: Objection. You can answer.

THE WITNESS: Well, our requirement is pretty simple. The requirement is based on the needs of the service and the needs of the individual employee, and we consider all factors when making a decision, just like we did in Mr. Groff's case.

Our decision was to allow him to go and worship on the day that he identified as his Sabbath, and we would try to get volunteers in order to meet his faith system, belief system, whatever an individual may call it.

You know, we tried to reasonably accommodate Mr. Groff, but his decision to take off was based on his belief. And I respect that wholeheartedly, but he made a decision. We had to make a decision. We made our decision. We tried to accommodate him, and he wanted nothing less than just to be off on Sunday. That's the decision we made. Whether it meets the legal

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requirement or not, we tried to accommodate Mr. Groff. BY MR. REINACH:
Q. This letter that has been marked as

Exhibit 3, does this represent your communicating to Mr.
Groff the Postal Service's decision with respect to his request for religious accommodation?
A. This letter was the decision in response to his request.
Q. For religious accommodation?
A. For religious accommodation.
Q. And you understood that his religious belief was not to work anytime on Sunday.
A. Yes, I understood. He made it very clear that if he couldn't get Sunday off, he was going to resign, I believe it was.
Q. Do you recall that he actually did eventually resign?
A. To the best of my understanding, he did eventually resign.
Q. Now, one of the things that was offered to him was a modified schedule to come to work after Church; right?
A. Right. That was one of the things.
Q. But that would not resolve the conflict
with his religious belief, would it?

## A. Well, conflict comes from within. I doilt know wht 420 Page 67 of. 188

 just made a decision based on his request.Q. But you understood that the belief that he reported to you was not to work anytime during Sunday?
A. Yes.
Q. So that included Sunday afternoon and Sunday evening; right?
A. That is correct. Based on the entirety of the conversation, I concluded that he did not want to work at all on Sunday, but I still had to try and make an offer to him that was reasonable.
Q. And you understood that allowing him to come in after Church didn't fully resolve the problem and only partly resolved the problem; right?
A. Well, that wasn't the only thing that was offered to Mr. Groff. Days when we could get volunteers, yes, he could have the whole day off. That was the other side of the equation. But when we couldn't get volunteers, at the very least he would still be able to worship.
Q. Do you know whether his management was able to obtain volunteers?
A. I don't know how many times, if any, he
was able to obtain volunteers, but that was an option
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that was on the table.
MR. REINACH: Do you have the binder that's Exhibit 1?

MS. DeBRUICKER: Yes.
MR. REINACH: So let's turn to Page 3324,
USPS 3324.
MS. DeBRUICKER: Where in the binder can
I find that? Because it looks like these are not in sequence.

MR REINACH: They should be in sequence. It should be towards the back.

MS. DeBRUICKER: My mistake.
(Discussion was held off the record.) MR. REINACH: We've given the witness an opportunity to review the part of Exhibit 1 that is Bate numbered USPS 3324. There's an e-mail exchange --

MS. DeBRUICKER: Hess Exhibit 1?
MR. REINACH: It is Hess Exhibit 1.
Thank you.
BY MR. REINACH:
Q. In Mr. Hess's e-mail at the bottom of this document he reports that he became aware that the Lancaster Annex was scheduling additional people to work on Sunday knowing that Mr. Groff, even if scheduled, was not coming into work. Is that correct?
Q. Yesase 5:19-cv-01879-JLS Document 3|7-24
A. I guess I'd have to take it on its face
value. I don't know what they were actually doing.
Q. That's what Mr. Hess was reporting was the practice?
A. That's what he was communicating.
Q. And you replied to him in the e-mail at the top; correct?
A. Yes, I did.
Q. And in that reply you essentially said we're not obligated to do that, all we're obligated to do is ask for volunteers.
A. Well, my communication --

MS. DeBRUICKER: Objection.
THE WITNESS: My understanding, based on
this e-mail and based on my limited recollection of the event other than reading this e-mail, he seemed like he wasn't clear on the letter that I wrote in response to Mr. Groff's request for religious accommodation.

And I guess what my communication was to him is to just reiterate what I communicated in my response to Mr. Groff in accordance to his request. Because what he's communicating down there does not represent or even remotely represent what I communicated
in my letter.
So I just reiterated that he is required to solicit for volunteers, document it, and Mr. Groff is required to work when he's required to work just like any other employee. That was my communication. BY MR. REINACH:
Q. Now, earlier we showed you that Mr. Groff had been issued a 7-Day and a 14-Day Suspension. If Mr. Groff continued to be scheduled on Sundays and did not work scheduled Sundays, would removal be the next step in the disciplinary process?

## MS. DeBRUICKER: Objection.

THE WITNESS: That would be a decision that was made by local management in the office. Now, to just say removal is imminent, like it was gonna happen, would not be a fair conclusion because during the interim of the 14-Day and the possible removal, he could have become regular. So it's just based on speculation. I can't say that that would have been the end result.

There's a lot of things that could have occurred during the interim of the 14-Day and possible removal, so I can't say that that would be a factual statement.
BY MR. REINACH:
Q. Given your understanding of Postal
notedworkscheduled suendays, how ionny Sunday absence could he have accumulated before removal would have beel required?

MS. DeBRUICKER: Objection.
THE WITNESS: Well, that would be a question that you would have to ask the installation head, which would have been Mr. Hess at that time or whoever was in the position because he was the OIC. I don't think he was the Postmaster at that time, so he was acting as the Postmaster.

Like I said previously, the rules have to be consistently and equitably enforced for individuals that are equally situated to Mr. Groff. So whatever his threshold was for his office, that would be the determining factor.

I can't tell you how many absences that would take or how long it would take. It just would be based on the consistency and equitability of the enforcement in that office. There are some offices that have a higher threshold or a lower threshold, so I cannot tell you that.
BY MR. REINACH:
Q. So ultimately the decision rested with Mr. Hess and whoever his direct report was who would be
the deciding official?
MS. DeBRUICKER: Objection.
THE WITNESS: Well, my position is the decision always rests with the employee. The response to that decision is prompted by the employee's behavior. And Mr. Hess's responsibility to his position, based on the ELM requirement, is management is responsible for controlling unscheduled absence -- like I said, unscheduled absence or any absences not scheduled and approved in advance.

Employee's requirement is to be regular in attendance and make every effort to avoid unscheduled absences. So when Mr. Hess makes a decision, it prompts a response by management to make a subsequent decision control unscheduled absences.
BY MR. REINACH:
Q. Do you think that it's appropriate for the Postal Service to require someone on pain of discipline to violate their belief about observance of the Sabbath?
A. I think I previously answered that question. The Postal Service doesn't take corrective action against the employees based on the reason why they didn't come to work. The decision was based on whether they were regular in attendance or not. And if they

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Whether they went to the ball game like you just illustrated earlier, whether they went to the movies, whether they were actually sick, even when an employee is legitimately ill, unless that absence is covered by the Family Medical Leave Act, it's not protected from corrective action.
Q. Does it trouble you at all that Mr. Groff lost his job because of his insistence on observing his Sabbath and not working on this day?

MS. DeBRUICKER: Objection.
THE WITNESS: I want to answer your question. It troubles me when anybody loses employment. It legitimately troubles me when anyone loses employment. I really admired Mr. Groff's decision to hold true to his faith. That's just my standpoint. But my beliefs are not based on -- my position with the Postal Service is not based on my beliefs. It's based on my obligation to uphold the handbooks and manuals that I oversee.
BY MR. REINACH:
Q. So switching gears slightly, if I
understood your testimony a few minutes ago, if Mr. Groff had continued to hold to his belief and not work when
scheduled on Sundays, depending upon what -- I think you used the term the threshold of the office, how many absences, unscheduled absences would then warrant the next step in discipline? At some point, if he continued to miss scheduled Sundays, his managers would send up a request for removal.

## MS. DeBRUICKER: Objection.

 THE WITNESS: That's a possibility.
## BY MR. REINACH:

Q. Based on if he continued to miss scheduled Sundays, sooner or later the request for removal would be submitted. He wouldn't be allowed to continue missing scheduled Sundays indefinitely, would he?

## MS. DeBRUICKER: Objection.

THE WITNESS: That would be based on the decision of the installation head.
BY MR. REINACH:
Q. So are you saying that his Postmaster had the discretion to simply permit him to miss scheduled Sundays and never issue the removal?
A. I'm not saying that his Postmaster had the discretion. I told you my testimony was that his Postmaster had a responsibility to control unscheduled absence in accordance with the ELM provisions. That's Plaintiff'sAppendix000066 65

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And just like I said, Mr. Groff's
decision to take off or Mr. Groff's decision about his employment is his decision, which prompts the decision by the manager. And when his manager doesn't do what they're required to do based on a decision to act or not act, then the next higher level manager makes a decision about his employment.

It's just the nature of the handbooks and manuals because the ELM also requires under Section 372 sound supervision, which requires formal and informal consultations with individuals when they're not performing to the duties that they are being compensated for and required to do.
Q. So if I understand what you just told me, if Brian Hess, as Mr. Groff's supervisor, had allowed Mr. Groff to accumulate unscheduled Sunday absences withoul issuing him discipline, sooner or later Mr. Hess would have been subject to discipline for failure to carry out his own responsibilities?
A. That would be a possibility.

MS. DeBRUICKER: Objection.
BY MR. REINACH:
Q. So assume for the sake of our discussion
here that Mr. Groff held to his religious beliefs and continued to accumulate unscheduled Sunday absences af having received his 14-Day Suspension, and at some point management sends up to Labor Relations a request for a removal. Can you explain to me how Labor Relations woult review and address that request for removal?
A. We would review all the documents just like we do any other. We would review all the documents just like we would any other request for removal to make sure it meets the test of just cause. And if it met that test, then we would -- we would prepare the removal action and submit it to the field with all the necessary attachments, giving the employee the reason for the removal based on the charge, the ELM or handbook and manual citations. And we would also give the employee their appeal rights, whether they had appealed to MSPB or to a grievance procedure.
Q. As you had earlier testified with respect to other discipline, when it came to a decision concerning removal, the reason for Mr. Groff accumulating unscheduled Sunday absences, i.e., his religion, that's not a factor in the determination as to whether removal is appropriate. Is that correct?
A. Well, the reason would be -- the reason would be -- I always run ahead of the objection and I'm
in the letter, it wasae were going qjattempt tot findocument 37-4 volunteers for when Mr. Groff was scheduled or allow him to go worship on his Sabbath day.
Q. Right. So if you have an opinion about this -- and I'm going to ask you -- if one of Mr. Hess's co-workers is sent an e-mail from his Postmaster, hey, we have somebody who needs to be off on Sundays to go to Church, are you willing to cover, versus getting a phone call from Mr. Groff directly, hey, would you cover for me once in awhile, do you think that an employee is more likely to respond favorably to one or the other type of request?

MS. DeBRUICKER: Objection. You can answer if you know.

THE WITNESS: I have no idea.

## BY MR. REINACH:

Q. In your discussion with Mr. Groff, did you explore the possibility that he could work all of the non-Sunday holidays in some sense to offset his Sunday obligations?
A. Well, the reason why the non-careers are hired is they work -- they do Amazon -- the hub is Sunday and holidays, so the rotation would continue for the holidays. So that's really -- it would be the same thing
whether it was Sunday or the holiday. He's still required to go on the rotation.
Q. Well, on the rotation he wouldn't necessarily come up for all ten of the Federal holidays, would he?
A. It's possible. Depending on if someone had leave scheduled, it's possible. Depending on how many people -- you know, the attrition rate, depending on how many RCAs resigned. I can't speculate as to whether he would have or he would not have. There's no guarantee that that would have occurred.
Q. But you didn't have any discussion with him about whether he could work all of the holidays since they were not on Sundays, did you?
A. I don't recall having that conversation.
Q. Did you ever learn that when he was at Quarryville, that he was accommodated for a time and allowed to avoid the Sunday shifts, but required to pick up extra shifts during the week?
A. I may have. I can't recall offhand for sure.
Q. When you were --
A. Just the name of the office somehow comes to mind, but I don't know all the particulars surrounding that conversation, if at all, if it's even

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with him that Sunday was not an obligation when he was hired by the Postal Service?
A. I don't recall that conversation.
Q. Did he explain to you in that
conversation that the reason he moved from Quarryville to Holtwood was to avoid the Sunday obligation?
A. I don't recall that conversation.
Q. And at any time did you look into the possibility that Mr. Groff could be required to pick up extra shifts during the week in place of having to work on Sundays?
A. I don't recall whether I did or not.
Q. At any time did you have any
conversations with anyone in the Labor Union concerning Mr. Groff?
A. I did have conversation -- not
pertaining to Mr. Groff specifically. I don't know -- I don't recall whether it was before or after the meeting with Mr. Groff, but I did have a conversation with Barbara Callahan, who was the District Representative for the Rural Carrier craft.

And I do recall her mentioning that they
had a specific case somewhere -- I don't even know if it
was in our district -- where they grieved the fact that somebody had requested a religious accommodation and th grievance was actually -- the grievance was ruled in the Union's favor, that the employee was hired for Sunday Amazon or Sunday delivery and that other employees were not allowed to be off because the individual was not required to be scheduled on the same -- in the same manner as other employees.

Now, the specifics of it, I mean, that's basically all I recall offhand.
Q. I'm not sure I understood what you were just explaining. Are you saying that employees successfully complained about the granting of an accommodation to somebody who wanted to avoid Sunday Amazon delivery?
A. Right. And the Union prevailed that they would be treated like any other employee. That was the gist of the -- I never saw any documents. I didn't see any grievance settlement or award as it relates to that, but it came up in conversation. I can't recall why.
Q. Do you recall when that came up in conversation?
A. No, I don't. Like I said in my
testimony, I don't recall whether it was before or after

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 and operational requirements. That's the bottom line.They're not scheduled based on their needs first. The first thing is we schedule based on the needs of the service. That's the primary obligation under the leave provisions if leave is considered and scheduling is considered based on the needs of the service.

MS. DeBRUICKER: Counsel, if you're asking him questions about the MOU or the Collective Bargaining Agreement, it might be helpful to show him the document if you don't think the document speaks for itself.

MR. REINACH: I don't have any further questions.
BY MS. DeBRUICKER:
Q. Mr. Groff [sic], I have a few questions
for you just to hopefully clarify a few things.
A. Okay, no problem.
Q. You discussed at different points of your testimony the accommodations that the Postal Service did offer or did its best to provide for Mr. Groff, and I think it would be helpful if we could clarify and list what those were.

To the best of your recollection, what accommodations was Mr. Groff offered in response to his request not to work on Sunday?

MR. REINACH: Asked and answered, but you can go ahead.

THE WITNESS: Basically that we -- one, we would try and find volunteers for Mr. Groff so that he could be off to observe his accommodation that he requested, and if that was not possible, then we would allow him time to attend his religious services and be later scheduled that day.
BY MS. DeBRUICKER:
Q. Do you recall whether he was ever offered a different day for observance than Sunday?
A. A different day? I don't recall that part offhand.
Q. Was it the case that if a substitute was found, if a volunteer was willing to take that spot, then Mr. Groff would not be found absent when scheduled on a Sunday?
A. No. He would be scheduled off on that day when a volunteer was available to take his spot.
Q. There was some discussion about a possible transfer recognizing that there was some caveats to that. Plaintiff'sAppendix000068

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today, I just didn't see how that would solve his issue
as a non-career employee because no matter where he wot obtain a transfer, he would find himself in the same situation possibly, almost definitely because they are a supplemental workforce and that's -- the supplemental workforce works on Sundays.
Q. You mentioned you spent three years at the seminary?
A. Yes, I did.
Q. Are you an ordained Minister?
A. Yes, lam.
Q. Was there ever any doubt as to the seriousness of Mr. Groff's religious convictions?
A. Never doubted it. I actually admired his convictions.
Q. Did you learn of Mr. Groff's religion prior to his request for accommodations?
A. My recollection is I learned about it through the -- what I call the interactive process by speaking to him because I didn't want to assume anything. That's why I asked him about the Sabbath day. And he identified that, based on the fourth Commandment, and I respected that.

You know, l've had a lot of conversations with individuals pertaining to the Sabbath because of, you know, my studies and the people that I have surrounded myself with, and I understand that people recognize the Sabbath in different ways.

You know, so I just needed to understand Mr. Groff's request and, you know, his position as it related to the Sabbath. And I believe we had a very minimal conversation, but he was able to identify what his Sabbath was. He identified it as Sunday, and he identified it as it was a day of rest, and I respected that.
Q. Did you have any negative feelings at all regarding Mr. Groff's religion?
A. Not at all. I embrace the same
religion. Like I said, I really admired his conviction. I admired his commitment to his faith and his belief about the Sabbath. You know, we all look at the Sabbath in different ways, but I still admired his conviction.
Q. Did you treat Mr. Groff any differently after you learned of his religion and his beliefs?
A. Absolutely not.
Q. Did you treat Mr. Groff any differently once he filed an EEO claim?
A. Absolutely not.



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

GERALD E. GROFF, Plaintiff
vs.
MEGAN J. BRENNAN, POSTMASTER GENERAL, UNITED STATES POSTAL SERVICE, Defendant :

NO. 19-CV-1879

DEPONENT: BRIAN M. HESS

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

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

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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?

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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 somewhe 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.
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
 Sunday was sincerely held?
A. No.
Q. At any time did you try to encourage Mr. Groff to consider working on Sunday or part of Sunday?
A. Can the question be repeated?
(Whereupon, the Reporter read back the referred-to testimony.)

THE WITNESS: I would not say encouraged.
I discussed his options with him in regards to working on Sundays. I told him of the accommodation that was available of a modified start time.
BY MR. REINACH:
Q. And what did you discuss about a modified start time with Mr. Groff?
A. That he would be able to come in after his church services.
Q. And did you specify a particular time?
A. That was flexible based on the church --
the time of the religious services.
Q. What was his response to you, if any?
A. That wasn't an acceptable accommodation.
Q. Did he explain why?
A. That he wanted the whole day as the

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Lord's day to be off and not work.
Q. That was his religious belief not to work
on Sunday at all; right?
MS. FINKELSTEIN: Objection. You can
answer.
THE WITNESS: That was his belief.
Correct.
BY MR. REINACH:
Q. That's what he explained to you was his belief?
A. Right.
Q. Which you didn't have occasion to doubt that that was his belief?
A. No. I did not doubt it.
Q. So while we're on the subject of this offer of a modified start time, do you recall when you first discussed that with him, with Mr. Groff?
A. I can't recall a date or time exactly, but it was brought up at all the disciplinary meetings and also, you know, in other times in the office, you know, I said that was an option.
Q. So do you remember where in the process was the first time that it was discussed? There was a Letter of Warning, there was a 7-Day, there was a 14-Day, there were a bunch of meetings in between. Do you recall

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 Interview it was -- that option was discussed with him, that that could be accommodated that way.MR. REINACH: Another acronym for you we'll be using is PDI for the Pre-Disciplinary Interview.

THE REPORTER: Thank you.
BY MR. REINACH:
Q. Do you recall who, either in Management or Labor Relations or anywhere within your discussions concerning possible accommodations for Mr. Groff, who first suggested offering him a modified start time, or was that your idea?
A. That was the offer to all employees who wanted to attend church services. So I don't know if I offered it to him first or if it was Doug French, who was in charge of the Sunday Amazon Hub at that time. I'm not sure who talked to him about it first.
Q. When you say it was offered to everyone doing Sunday Amazon delivery, when did you first learn of that?
A. Probably within the first week or two that the Amazon Sunday delivery started because that wa -- I did notice on the e-mails that some of the carriers had different starting times. I don't know, but there
was two things going on at that time. They had Amazon
Fresh, which had to be delivered before all the other Amazon, so some started earlier because of that, but I think -- and then at that first PDI, you know, that was discussed with Gerald. And I'm not sure of the exact date of the PDI.
Q. So within the Lancaster Hub area, do you know, were there others who -- besides Justin, who you already testified about -- that made arrangements to have their start time after attending church services on Sunday?
A. I didn't manage the Hub directly, so I don't know -- they would not have -- those requests would not have come through me, so I can't answer that question.
Q. On Sundays, how long was a typical -- I guess you'd call it a route, that someone delivering packages for Amazon, how long would it take?
A. Again, I didn't manage at the Sunday Annex in Lancaster, but I think on average -- you know, various factors, depending on how many people reported scheduled and what the volume of parcels was that day, six to eight hours average, depending on those factors.
Q. I saw a lot of e-mails about scheduling people to deliver for Amazon on Sundays. Do you know
needed, or did it Vasyfrontweek Powteek? Document 37-2
A. There was a set number. On the onset they didn't know exactly how many we needed, but as they got to see what the flow of mail was like, they were able to determine they needed this amount every week.
Q. Now, as far as the issue of offering a modified start time, did you have any discussions with anyone about whether this was an appropriate accommodation for Mr. Groff?
A. I believe I e-mailed in an e-mail to Doug French that Gerald -- the modified start time was not something that would be an accommodation for him that he would be satisfied with.
Q. Well, you would agree that there's a difference between someone who merely wants to attend weekly worship services on Sunday and someone who says this is, you know, the Lord's day and I don't work on that day; correct?

MS. FINKELSTEIN: Objection. If you know.
THE WITNESS: Could you repeat the question again, please?
(Whereupon, the Reporter read back the referred-to question.)

THE WITNESS: It's a very broad question, 20
and I don't know if I can answer that because that's based on a person's own individual belief.
BY MR. REINACH:
Q. At some point you were asked to get a
written request from Mr. Groff about his religious accommodation. Do you recall that?
A. I think it would have been in January of 2018. From the outset of March, 2017, when this started, Gerald said he didn't want to work on Sundays because of his religious faith.

## (Phone interruption.)

Q. Sorry. Please continue.
A. He had verbally told me he didn't want
to work because of his religious faith, but it was never a formally written request to have a religious accommodation.
Q. Who was it that asked you to get something in writing from him?
A. I believe it would have been Laurie

McKinsey, who was handling one of the -- was handling the discipline writing at that time.
Q. And she works in Labor Relations?
A. She did at that time, yes.
Q. So explain how the process of doing
discipline works. Who initiates the discipline?

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the individual that woutd initiate the discipline.
Q. So in this case that was you?
A. Correct, but there was -- from the outset of Amazon, Lancaster Carrier Annex clearly stated that they would be handling the discipline for the Sunday Hub because they were supervising the employees on Sunday.

And the employees that were scheduled we working for the Postal Service at the Hub on that day, so that's who their supervision was. So at that point in time, the carrier Annex was taking care of discipline.
Q. So when the Letter of Warning was issued to Mr. Groff in 2017, was that initiated from someone at the Lancaster Annex?
A. Yes, Diane Evans.
Q. And the official who initiates, do they also draft the charge? The actual written discipline is written up by Labor Relations, is it not?
A. Correct.
Q. And so it's my understanding that Labor Relations really has to approve the issuance of discipline that the official is proposing.
A. Correct. They provide guidance through the process.
Q. So is it fair to say that in any
discipline that you issued, it had to be approved by Labor Relations?
A. Correct.
Q. And with respect to discipline that you issued to Mr. Groff, was it also approved by Legal, if you know?
A. I don't know the answer to that question.
Q. At some point you had direct contact with Legal concerning Mr. Groff, did you not?
A. Yes. This case was discussed.
Q. What did you discuss?

MS. FINKELSTEIN: Objection. I'm going tt
direct you not to discuss in this deposition the content
of any conversations between you and the Post Office's attorneys.
BY MR. REINACH:
Q. Did you initiate discussion with the

Legal office?
A. No.
Q. Did you initiate the issuance of a 7-Day

Suspension to Mr. Groff?
A. Yes.
Q. And explain the process of how you went
A. S6 tuecpbitil Serviceq78-alpfogressivement 37-4 disciplinary process, the first being, you know, a verbal discussion. The next step would be a Letter of Warning, then a 7-Day Suspension, and then a 14-Day Suspension, and then dismissal would follow if it was -- that was the last option.
Q. So specifically my question had to do with the issuance of the 7-Day and what was the process for actually getting that administered to Mr. Groff.
A. So I had a Pre-Disciplinary Interview with him to discuss the charges of missing -- the missing days on Sunday Amazon delivery, not reporting as scheduled. We discussed it at his PDI.

And then the information was submitted to Labor Relations for writing the discipline, and then concurrence was given by my manager to --I believe the 7-Day was approved by Keith Krempa, who is the Post Office Operations Manager at that time. Krempa, K-R-E-M-P-A.
Q. So ultimately Mr. Krempa is the one who gave the official approval for the issuance of this discipline, the 7-Day discipline to Mr. Groff; correct?
A. He had to approve it, right, that all the necessary steps were followed. Correct.
Q. And was it his role simply to approve

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that the steps were followed or to understand and approve the basis of the discipline?
A. His approval was based on the issue and that we were following the proper steps.
Q. I just want to make sure we have a clear record. He's not just approving proper procedure. He's approving the substance of the discipline, as well. Isn't that correct?
A. Correct.
Q. Did you have any communication with Mr. Krempa as to why you had proposed issuing the 7-Day Suspension to Mr. Groff?
A. Yes.
Q. Did you discuss or just e-mail?
A. Discussed.
Q. On the phone or in person, if you recall?
A. In person.
Q. So tell me what you discussed.
A. I explained to him the merits of the case of what had been happening and transpired since March, 2017; that a Letter of Warning was issued in June of 2017, and this is where we're at, and he is still refusing to report to work as scheduled. And he was, you know, aware of it was an ongoing situation.
Q. Did you specifically inform him as to why

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Q. So just to be clear, you told Mr. Krempa that Mr. Groff refused to work on Sundays because it was his religious belief?
A. Yes.
Q. I know it's been a couple years ago. Do you recall specifically what you said to him?
A. I do not.
Q. I guess that reminds me of one of the other kind of ground rules, which is that I'm entitled to your best testimony. If you have to estimate something or give an approximation, that's okay, but please do not guess. If you don't know, just say so.
A. Okay.
Q. When you informed Mr. Krempa that Mr. Groff was refusing to work on Sundays because it was his religious belief, did he say anything to you?
A. I think it basically was that since he's refusing to work and not accepting the accommodation offered, we have to follow the disciplinary steps.
Q. Did he say anything to the effect, well, it doesn't matter the reason why he's not working on Sunday?
A. I can't recall that.
Q. Did you have any discussion about whether
others who were not working on Sunday had been
disciplined?
A. I did not have a discussion about that.
Q. At any time did you discuss with anyone
that we have to treat everyone who is absent on Sundays
when they're scheduled -- that we have to treat them the
same?
A. Again, I was not in charge of the Sunday
Lancaster Annex, so I can't answer that question. I was
not managing those employees.
Q. So you said at the time of the Letter of
Warning Diane Evans was the person in Lancaster. What
about at the time of the 7-Day Suspension? Who was the
managing official in Lancaster?
A. So at the time of the 7-Day Suspension,
the Amazon was being delivered out of the Holtwood Post
Office because it was peak season. And during peak
season Amazon traditionally, from about Thanksiving till
the first week in the New Year, is what we call decoupled
and delivered at the local Post Office.
Q. So then you were the one who initiated
the 7-Day, and it was signed off on by Krempa; correct?
A. Yes.
Q. We'll get to the 14-Day. Just a few

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A. CGrFett 5:19-cv-01879-JLS "Document $37-4$
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 32
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?

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Fcould. 4 mfean, 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 o
Holtwood, I had the RCAs who were assigned to the Holtwo 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
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
the case and what fuad transpiry before sotse knew why would be issuing the 14- - I just want to make sure of this.

## (Witness reviewed document.)

Yes, so he would know why it was at a
14-Day, and that we had gone through the other progressive steps because of his -- Gerald's failure to report as scheduled after offering accommodations and trying to find volunteers for him, as well.
Q. But specifically he knew that you were not handling this alone, that you had been consulting with the various parties about what to do?

MS. FINKELSTEIN: Objection. You can
answer.
THE WITNESS: I can't answer. I don't know if he actually knew that or not. I can't -- like I said, I gave him the background information. I can't recall if I informed him I've been in contact with HR and Labor Relations. I can't speculate as to exactly how it was told at that time.
BY MR. REINACH:
Q. Did you have a conversation with Mr. Groff at the time that you delivered this to him?
A. I don't recall any. Basically at this
point in time because of the EEOs and the discipline, I would just give him the information and say here's your 14, you can please read it, sign it, l'll give you a copy for your records.

Because the EEOs I was not trying to force anything on him or, you know -- so I basically was handling business.
Q. So you don't specifically recall any discussion with him at this time beyond what you just said?
A. Correct. I don't -- I usually just
handed them to him, said here, this is the 14-Day from the previous PDI, please look at it and sign off on it, and I'll give you a copy.
Q. At any time did you tell Mr. Groff, you know, what would happen if he kept going this way, that, you know, the next step would be termination?
A. At the very outset in March of 2017, I let Gerald know that they were serious, 'cause I was on the telephone with Lancaster when they implemented the Sunday Amazon, and they were very clear that if people were not reporting for duty as scheduled, they would be initiating the disciplinary process.
Q. So this goes back to March of 2017?
A. Correct.

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A. Correct. When the Amazon was initiated, since it was a very new and a large undertaking to organize -- I don't know how many -- ten or more offices reporting to one facility, Doug French led a teleconference with all the offices that were involved with the new Hub system, explaining how it was gonna worl and, you know -- and I guess they assumed there may be issues of -- because RCAs had never had to work Sundays in the past. They were kinda expecting a little bit of a backlash from employees not wanting to work. So they were clear that discipline would be issued for those who were not going to cooperate and report as scheduled.
Q. Was there any discussion at that time that there might be a backlash because RCAs wanted to be in church on Sundays?
A. I don't recall that specific conversation.
Q. Who led out in that teleconference call?
A. I believe it would be Doug French, Aaron

Zehring and Diane Evans, who were all there when this Amazon process was initiated and responsible for the scheduling and making sure everything went smoothly.
Q. Let's take them one by one. Doug French,
what was his job in March of 2017?
A. Postmaster, Lancaster.
Q. And Aaron Zehring?
A. Manager Customer Services, Lancaster.
Q. And Diane Evans?
A. Supervisor, Lancaster Carrier Annex.

They're all at the Lancaster Carrier Annex.
Q. Did you ever learn whether any RCAs quit because they were unwilling to work on Sundays?
A. Several did.
Q. How many is several in your understanding, to the best --
A. Going off the best of my recollection, two in the Peach Bottom Post Office eventually resigned because of Sunday Amazon. I think two at the Gap Post Office resigned because of Sunday Amazon. There may be few others. They're the offices I interact with the most, so that's how I knew that information, working with those Postmasters.
Q. Was it your understanding that fewer than ten RCAs resigned rather than work on Sundays within the area of the Lancaster Hub?
A. I can't answer that because I can't put a definite number on it.

MR. REINACH: That's fair. You know, if
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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
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:
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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
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 could not comment. So it meant the Postal Service losing some very good employees who thought things weren't bei 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
 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

## 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?

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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': 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?
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' 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 wa: 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 an 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
 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.
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## 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 PlaintiffsAppendix000078

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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 । 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
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

## 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, bu was excused in some way?
A. Those would be covered under Family Medical Leave Act.
Q. Did you have occasions where individuals

FMLA, which is tosse 5 sitead of taking time off in acument 37-4 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
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?

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 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.
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 ma 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

French at the onsef eft isbback in question Doug, where are we at with this process 'cause it had been several weeks and we hadn't really communicated how the situation was going to be handled.

So my question to him was, is Gerald going to be kept on the schedule, or are we taking his name off the schedule. Because at that point in time -- at the onset, many RCAs were against having to give up their Sundays that they were used to having off to work, and they were all seeing that Gerald was not working, so they started questioning, why is Gerald on the schedule and not working. So I questioned Doug in regards -- you know, how they're going to handle this.
Q. So at that time did you think that taking Gerald off the Sunday schedule was a possibility?
A. This was at the very early onset before we were trying to work out what the accommodation would be. And I think Doug's response was, no, he's still on the schedule, and he will be scheduled as needed.
Q. Did he explain to you why the Postal Service would keep someone whose religion precludes him from working on Sundays, would keep him on the Sunday schedule?
A. Could you state the question again,

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please?
Q. I can try to ask it a little better.

When you had this exchange with Doug French at the beginning, did he ever explain to you why the Postal Service would keep someone on the Sunday schedule whose religion prevented them from working on Sundays?
A. This was after the point of him being offered -- Gerald being offered the flexible start time, and that was the accommodation that was offered. And he was like, we're going to keep him on this schedule, and if he's not willing to the flexible start time, we'll have to pursue discipline.
Q. So I think you didn't actually answer my question. I think the answer is no, that Mr. French never explained to you why Groff would be kept on the Sunday schedule even though he wasn't willing to work Sundays. Is that correct, that Mr. French never explained that to you?
A. I would say no, we never discussed it.
Q. If Mr. Groff had worked on Sunday, would he have been entitled to overtime pay?
A. RCAs are entitled to overtime pay over 40 hours in a week, so it would be dependent on what other hours he worked that week.
Q. At Holtwood are you aware of whether

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scheduizd for/sunday denvery Were iot delivered until Monday?
A. So we received Amazon, and we had FedEx from the previous day. Please follow me on this. Holtwood was considered a non-promised site by Amazon.
Q. Got it.
A. But if we let all those parcels sit for three days, Monday -- we would never be successful on Monday. So it was at the local Postmaster's discretion to either deliver those packages or hold them. And my decision was to deliver them because there was no possible way we could work -- have room in our office on a Monday to deliver the packages if they sat for three days.
Q. So I need to unpack that a little bit. Sunday Amazon delivery the packages came in early morning, like 3:00 a.m. from Amazon on Sunday morning?
A. It varied. The schedule changed every three to four months. Sometimes it was $4: 00$ in the morning, sometimes it might be 6 o'clock. It was all based on the current schedule.
Q. Okay. You said you wouldn't hold packages for three days. If Amazon delivered packages to Holtwood at 3,4,5,6 o'clock in the morning on Sunday,
any that were held over till Monday would only be held over one day. Start with that. All right?
A. I agree with that, but it's not totally accurate.
Q. Okay.
A. So let me try to explain it further for you.
Q. Thank you.
A. So FedEx comes on a Saturday after the carriers have left. So we already have an upright or a pallet of parcels sitting in the office for delivery for Monday. Amazon comes on a Sunday morning, again, witl two or three pallets. So now we're up to four pallets. If we waited till Monday, Amazon's arriving with another four pallets with -- based on last year, if I did not deliver on Sunday, we would have had no place in the office to put parcels. It would have been unsafe, and carriers would have been out late at night delivering on a Monday, which would not have been safe either. So it's a safety issue.

So my choice, as the manager running the office, was that I would deliver the parcels on Sunday to manage an even workflow so there was room in the office $t$ work safely and the customers got their packages timely, and it made Monday easier for the regular carriers because
 distribution area at Holtwood where we distribute the mail is not much larger than this room.

Then you have the Postal Service truck coming with four or five uprights of mail right after Amazon. So now we have ten pallets of mail or uprights to sort on a Monday morning in a room this size. It's not practical.

So that is why, even though we are a non-promised site, it was at my discretion for the operation to work most efficiently and safely to deliver on Sunday.
Q. Quick question going back to the subject of FMLA leave. If an employee had approved FMLA leave for a Sunday, they would not be subject to discipline for not working that day; correct?
A. Correct, but Holtwood had no employees that were ever -- outside of peak season, were scheduled to work Sundays. So there would be no reason for somebody to have an FMLA case through the year for Sundays only.
Q. Do you know whether you ever had any RCAs who worked enough hours to qualify for FMLA or who then had to take FMLA?
A. I am not an FMLA expert, so I can't really -- I know there's a certain number of threshold hours you work that you earn FMLA. I don't know what the breakdown is, though.
Q. At Holtwood in the 2017 -- from 2017
until you left -- let me just clarify. You're no longer actually working at Holtwood today; right?
A. Correct. I'm on a detail. So on paper I'm still the Postmaster of Holtwood, but I'm currently on a temporary detail in Harrisburg.
Q. When did you start in Harrisburg?
A. August.
Q. August?
A. Of this year.
Q. Is that detail kind of towards a
promotional opportunity?
A. It could be. I'm actually working at a lower grade within the Postal Service, so it's very questionable if it would be a raise of any sorts, but l'm doing a different job.
Q. So why -- briefly, why are you on this detail?
A. Does this pertain to the case? MS. FINKELSTEIN: I mean, l'll let you ask a little bit about it, but it's not really about why he's

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at the Hothwod Post Ofice, he was the Postmaster of the Holtwood Post Office. Can you give him a general sense ( what made you choose this detail?

THE WITNESS: Well, I can, but I don't think it really has bearing on the case. So l've been a Postmaster for 20 years, working in delivery. It's been stressful the last couple years. The main reason it's been stressful is finding help to cover 'cause many days I'm the one out there delivering, so I was ready for a change.

So I had the opportunity to put in for a detail to learn something totally different and learning another aspect of the Postal Service. It's not for monetary gain. It's for personal growth.
BY MR. REINACH:
Q. Thank you. I just wanted the overall context of what's going on. So from the time that you were at the Holtwood Post Office then --

MS. FINKELSTEIN: I'm going to grab him a drink.

MR. REINACH: Why don't we take a few minutes break.
(Short recess was taken.)
MS. FINKELSTEIN: We had a discussion o 114
the record. I don't think that any of the e-mails that the Postal Service produced, that there will be any issues of authenticity with any of those e-mails. If you want to give me a list, I'd be happy to look at them, but I think we can stipulate, for purposes of admissibility at trial, to the authenticity of any of the e-mails that l've produced to you.

MR. REINACH: That they are business records kept by the Postal Service?

MS. FINKELSTEIN: I didn't say I'd stipulate to hearsay, but they are. I don't think that's going to be a problem.

MR. REINACH: I would ask that you, at your convenience, review what's been produced in Exhibit today. I'm not saying do it now. And there may be some other documents --

MS. FINKELSTEIN: I think there's other things in here that are not e-mails, but yes --

MR. REINACH: There are a few.
MS. FINKELSTEIN: Yes. I will look at this when I get back. The question is, do I anticipate there being any objection to the authenticity of anything in Exhibit 1? I don't think there's going to be such an objection. Do I think that there's likely to be an argument that they're not business records? I see letters
business recordక.
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

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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

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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 cove
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.
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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

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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.

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ever discussed whether Gerald himself would be permitte 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.
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 18 th, 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 ba 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 ic 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 secons or third e-mail to follow up until they would make
cover.

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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,
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 Plaintiff'sAppendix000084

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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 tt 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

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 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 a 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' 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

A. I'm sorry, let you know what?
Q. Let me know that you've completed reading
it to yourself.
A. (Witness reviewed document.) Okay.
Q. So in this e-mail -- first of all, at
this time you're sending it to folks -- who are you sending it to?
A. This e-mail was sent mainly to the managers at the Lancaster Carrier Annex. Because in talking with Kelly Miller, the supervisor who was creating the Amazon schedule, she was previously Postmaster in Strasburg so was aware of the ongoing issue of Gerald refusing to work on Sundays. She was promoted to supervisor at the Lancaster Annex and assumed taking over scheduling duties from Diane Evans.

So with Kelly's knowledge -- this was on a phone conversation I had with her -- with Kelly's knowledge of knowing that Gerald was just going to refuse to work, she automatically just started skipping him on the schedule and just scheduling an extra body 'cause she knew -- and not knowing that Lyle Gaines and this was the decision that had been reached up top, that I sent to Erin

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Zehring, I guess lack of communication, not all of the employees at the Lancaster who managed the Amazon delivery were made aware of what the settlement was or how the religious accommodation request was going to be handled.
Q. Do you know for what period of time

Miller was skipping over Gerald and scheduling someone else?
A. Probably not more than a month 'cause I started seeing that he was never scheduled, and I called and questioned it. Like three or four weeks in a row and he was not scheduled and l'm like, well, why is Gerald not being scheduled. And she explained, well, I know he's not gonna come, so l just don't schedule him anyway. She was new at the position and wasn't aware -- I mean, she knew that Gerald was going to refuse, from being a Postmaster at Strasburg and knew 'cause people talk. And then when she came in there with her knowledge, I think she just started skipping over him 'cause she knew he wasn't going to come anyway.
Q. Did you hear any complaints about her skipping over Gerald?
A. I can't say that I made notes of when people complained, so I don't know if it was during this time or not. But I mean, like I said before, there was complaints from several different people in regards to Plaintiff'sAppendix000085

## Filed $02 \$ 14 / 20$ youtge writing this 88 e-mail, and you're

 referencing the practice that Miller was doing. And you say here, This satisfies his religious accommodation request for Sundays and no disciplinary action is needed. Do you see that?A. Yes.
Q. So if Miller had continued that practice, it was your understanding that that was satisfying Groff's need for religious accommodation, and he would not need to be disciplined?
A. Correct. I think with Kelly being a new supervisor, she wasn't aware that she was probably inadvertently -- she doesn't have approval to make that kind of decision to provide a religious accommodation. She never got approval from John Brodbeck, her supervisor, I'm pretty sure, to skip over him and not schedule him.

I think she was doing it purely on her own
accord, and it stopped once I sent this e-mail and explained what the process was supposed to be for Sunday Amazon scheduling.
Q. Well, you didn't specifically tell her to stop here, did you?
A. No. I was questioning what -- making 194
sure her supervisor knew what was going on because he was relatively new, too, as a Postmaster in Lancaster at that time. So there was a lot of people transitioning in and out of different jobs.
Q. Okay.
A. So, again, I was communicating to make sure we all understood this is what has been happening, how are we handling this.
Q. Well, it looks to me you had been directed by Lyle Gaines to look for volunteers; right?
A. Correct.
Q. But if she's just skipping over, then you didn't need to be looking for volunteers?
A. Correct.
Q. So you really wanted to know what are we going to do, are we looking for volunteers or are we just going to skip him?
A. Yes.
Q. And what you write here is that the volunteer RCA is not needed since an RCA is already pre-scheduled, and it does not show a hardship/burden to the USPS because it's not necessary to force an RCA to work on their Sunday off.
A. And what I meant by that was her just automatically scheduling somebody, you're just forcing an
in 2018 ?

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A. 2019?
Q. I'm sorry, 2019.
A. Yes.
Q. Are those same three full-time Career

Carriers still working as full-time Career Carriers in the Holtwood office?
A. To my knowledge, yes, but currently l'm not working in that office.
Q. Have any of them ever expressed to you any intent to retire?
A. Not in the immediate future, no.
Q. Do you know the specific ins and outs for how a Rural Carrier Associate is selected for a full-time Career Carrier position?
A. It's based on seniority, and they apply for the routes in the office.
Q. Is it possible that an employee who has been laid off or RIF'd might apply for a full-time Career Carrier position?
A. If there was a current RIF, they could be slotted into positions that become open.
Q. And could an employee who had been laid off or RIF'd supersede a Rural Carrier Associate

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regardless of the Rural Carrier Associate's seniority?
A. I don't know the answer to that question.
Q. Would the answer to that question be set forth in the manuals that the Post Office has?
A. Yes.
Q. You're not an expert in how a Rural Carrier Associate becomes a full-time Career Carrier, are you? It's not your area of expertise --
A. No.
Q. -- interpreting that part of the ELM?
A. No, but the basic is once a vacancy becomes available in an office, then the RCAs can apply.
Q. So I want to ask you about while Mr. Groff was a Rural Carrier Associate at Holtwood while you were the Postmaster in Holtwood. Did you ever offer Mr. Groff the ability to earn extra money and work extra hours in other post offices other than Holtwood?
A. Yes.
Q. Did Mr. Groff take those opportunities?
A. He would go to Quarryville willingly to get extra hours, but that was really the only office he would go to even though there were other offices who had needs and could offer him hours for work. He generally would refuse and not go to those offices -- not refuse,

## Eithee, anditwould ateline,you kRow, going to help

 another office.Q. Now, you spoke earlier about the fact that there was a time period when you were having Amazor Sunday delivered out of the Holtwood office as opposed to being delivered out of Lancaster, and you would contact other Postmasters from other area offices to see whether or not they had any employees who would cover on a Sund for Mr. Groff. Do you remember that testimony?
A. Can you ask that again?
Q. Sure. I just want to take you back to a topic. It's been a long day. I want to take you back to the topic of during the time period that Sunday delivery was being handled out of Holtwood as opposed to the time period when it was being handled out of the Lancaster Annex.
A. Okay.
Q. During the time period when you would reach out to Postmasters and ask them whether or not there were any employees who were willing to cover for Mr. Groff on Sundays, were there times when other employees from other Post Offices did come and work at Holtwood and cover for Mr. Groff?

MR. REINACH: Objection. Asked and
answered. You can answer again.
THE WITNESS: During the Christmas perio
no, no one came to cover for Gerald because all the
offices were decoupled and they were all manning their owi offices.
BY MS. FINKELSTEIN:
Q. Do you know whether employees from other Post Offices ever covered for Mr. Groff on Sundays when he was scheduled at the Lancaster Annex?
A. On a few occasions some did volunteer.
Q. Would you say that other Postmasters did respond when you sent out those e-mails asking them to solicit volunteers?
A. Yes.
Q. And sometimes those responses were successful, there was a volunteer who was willing to cover for Mr. Groff?
A. Right. Can I just clarify your previous question in regards to Sunday delivery out of Holtwood? During that time period, I did not send e-mails to other offices soliciting volunteers because those offices are all utilizing their own RCAs to deliver -- manage their own office.
Q. And you were able to find volunteers from within Holtwood --

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BY MR. REINACH:
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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?

A Nor, 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.
a 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 flrst started in 2016?
A It first started was it 2015 I believe because it was
before I was a regular supervisor.
$\square$
$\square$
$\square$

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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
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.

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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
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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 sald
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

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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
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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.

- 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.

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.

- 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.

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sorry
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    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?

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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.
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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. Graff 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

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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.
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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

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

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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. REI NACH: Let's take a short break.
THE WITNESS: I'm going to get her something to drink.
MR. REI NACH: Let's go off the record.
(Break taken from 11:20 a.m. to 11:25 a.m.)
MR. REI NACH: Let's go back on the record.
BY MR. REI NACH

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.

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 J ohn 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.

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    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.
    a 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?
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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.
a And who do you think told you that?
A If anything it would have been Janette Horn or

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.
a 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
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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
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

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

GERALD E. GROFF, Plaintiff
vs.
MEGAN J. BRENNAN, NO. 19-CV-1879 POSTMASTER GENERAL, UNITED STATES POSTAL SERVICE, Defendant :

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

Cáse 5:19-cy-01879-JLS Document 37-4 people see the posting, they want to come in. They think they're getting a full-time career position with the Postal Service when they come in for the interviews.

When they come to find out -- that I let them know that as an ARC, that you can never become a career employee, you will never get benefits, the only time we need to work you is a Sunday and a holiday. And when people would find that out, they -- a lot of them declined the position because they need to put food on the table. They need a full-time job.
Q. Were you also responsible for hiring the relief carriers, the CCAs, while you were at Lancaster?
A. Yes, I was involved with it.
Q. Did you also have trouble hiring CCAs?
A. No.
Q. Did you feel at the time that you left Lancaster -- was Lancaster adequately staffed at that time?
A. Yes. With CCAs, I must add.
Q. And if you would turn to Page 213 and look at Paragraph 20.
A. Okay.
(Witness complies.)
Q. You list dates there that, according to
the question, were the dates that Mr. Groff was scheduled to work on a Sunday but did not. Is that correct?
A. Yes.
Q. And in order to identify those dates, do you recall what you did?
A. I had to call and ask someone in Lancaster because, obviously, this is December when I filled this out.
Q. And you're in --
A. And who I spoke to, I honestly can't
answer that question.
Q. To the best of your knowledge, that was the information provided to you?
A. Yes.
Q. Do you recall whether you personally looked at his time records to get these dates?
A. No.
Q. I'm sorry, no, you don't recall or no, you didn't look at them?
A. Repeat your question again.
Q. My question had been, you know, do you recall whether you looked at the time records. I just want to make sure I got a clear record. When you said no, did you mean no, I didn't look at the time records or no, I don't recall whether I looked at the time records?

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## records.

Q. Thank you. I was a little confused. I appreciate that. If you would, turn to Page 215, Paragraph 28.
A. (Witness complies.)
Q. And you see reference there to a Letter of Warning that was issued to Mr. Groff for unsatisfactory attendance on June 12th, and you identified Diane Evans as the management official who issued that Letter of Warning. Do you see that?
A. I see Diane Evans, yes.
Q. Did you have any discussion with Ms. Evans concerming the issuance of this Letter of Warning?
A. No. I should have actually been more clear in my answer in stating that they need to contact Diane Evans for that record because I was not in any possession, and she was the supervisor during that time.
Q. You didn't have any interaction with Ms. Evans concerning the issuance of this discipline?
A. Not specifically for the -- if you're asking me if I demanded her to issue this discipline, no, I did not.
Q. I'm just asking if you had any discussion with her.
A. I don't recall.
Q. Did you know that she had done it?
A. I don't recall if I knew then or not.
Q. And in answer to No. 29 you reference a

PDI that Diane Evans conducted. Were you aware at the time that she had done that?
A. In order to issue any discipline, you would have to conduct a PDI first.
Q. I understand. I'm just asking if you knew that she had done that.
A. I guess, in reality, I would have had to have known that she did the PDI if she issued the discipline because, obviously, that would have to take place first, the PDI.
Q. As we sit here today, do you recall any interaction with Diane Evans concerning the disciplinary process of Mr. Groff in June of 2017?
A. I don't recall any specifics. No.
Q. Paragraph 32 , you indicate that Brian

Hess would send e-mails about Mr. Groff not attending work due to his religious beliefs. Do you see your answer there?
A. Yes.
Q. During that time period, did Mr. Hess
also send e-mails requesting substitutes to work for Mr.

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

DEPONENT: ROGER A. SHEDDY

DATE AND TIME: Wednesday, December 18, 2019 at 9:10 a.m.

LOCATION: Clymer, Musser \& Sarno, P.C. 408 west Chestnut Street Lancaster, PA 17603
MEGAN J. BRENNAN, POSTMASTER GENERAL, UNITED STATES POSTAL SERVICE, Defendant
GERALD E. GROFF, Plaintiff
vs.

Defendant :
NO. 19-CV-1879

has always been done where they have a master list with all of the available employees, RCAs, CCAs, clerks, and that they assign in a rotating fashion Sunday Amazon. BY MR. REINACH:
Q. So to your knowledge, do RCAs have any -is there any seniority rights that govern when they work on Sundays?
A. Not seniority rights. The way that l've seen that others have arranged to not work on a particular Sunday is by turning in a leave slip to the supervisor who manages the Amazon, but that was a more recent thing that I don't think was done at the time that we're talking about.
Q. Let's go back to the exhibit. So you wrote this. Did you send it to somebody?
A. I sent it to Earl Musik, M-U-S-I-K.
Q. And who is that?
A. I had met him when I went to a training session in Harrisburg. It was a session in which they talked about leadership, emotional self-care, I guess you could say, and morale. He was addressing, I guess, the problem that the Postal Service has with increased stress and strain because of the way that patterns of work are
going these days.
And I had spoken with him after. We had a nice conversation. And I then thought, well, this guy, he actually works in Washington, D.C., and he was telling us how closely he was working with the top management.
Q. So do you know what his exact position was?
A. At that time, but I don't know now. It was more like he was hired to work in the Postal Service as a -- I don't know exactly, really.
Q. But you understood that he was working for the -- he was an employee of the Post Office --
A. Um-hum.
Q. -- in management --
A. Yes. I'm sorry. I keep forgetting
these things.
Q. -- and he was working in Washington,
D.C.?
A. Yes.
Q. And did you ever receive a response?
A. No, I did not. I didn't even put on it
-- what do you call it, a -- you can tab it so that you have a re-notification, you have a notification if they've opened it, that type of thing.
Q. Sure. Now this is -- this is text, but

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e-mail that you sent? e-mails, the system automatically knocks them out. I'm sure that somewhere on the internet that it's there, but as they say, nothing on the internet goes away, but I don't have any access or idea.
Q. So I want to take a look at some of the things that you say here and ask you about them. So several lines down you say, The problem is that Amazon insists on Sunday delivery of their parcels; this means we have to draft RCAs, as we are unable to hire, and hav trouble retaining them. you were writing this about difficulty in hiring and retaining RCAs?
A. Quarryville had nine rural routes, two city routes. They also were supposed to have CCAs and RCAs. And when they hire RCAs, because there's still a shortage -- it's always been a shortage from the time I arrived in this district -- they end up just working them and working them and working them.
and then you have days off, but in the Postal Service
because of Sunday Amazon, in theory, you could have a person just work and work and work. break every tenth day, and that was very hard to do when you had mail to be delivered. And the mandate was very: very strict regarding delivery of mail.
Q. Were you personally involved in hiring staff?
A. No, I was not. The Postmaster made it a point to keep that firmly in her hands. She was one of those people who liked to have absolute control over everything in her office.
Q. Who was the Postmaster at that time?
A. Patricia or Trish Wright.
Q. Since becoming Postmaster, are you involved in hiring at all?
A. I have done everything I could to assist in getting people hired. I have also conducted interviews, and I have been in the process of choosing, selecting people. In fact, when I was covering in Strasburg, I was involved with the process there when we hired an RCA.
Q. So RCAs are relief people; right?
A. Right.
A. No. Unless you do something to save the

So what were you aware of at the time that

The usual job you have six days, five days

We have been told that you must schedule
pressure to put exasyoneo quatistand lo exemptroment 3才-4 one.
Q. So I guess that partly answers my question, but I was actually asking a somewhat different question. I gather from your answer that you're saying that there were some who were jealous because Mr. Groff was refusing to work on Sundays?
A. I heard carriers express that attitude saying, who does this one think he is, who does this one think she is. Like I said, people are not just working on their job; they're thinking about everyone else's job.

It did not help that I had a carrier in Quarryville, the shop steward, who would play people's jealousies off of each other so that sometimes you had two, three unexpected absences on one day because people called in just because.
Q. So aside from the issue of people's attitudes, jealousy, morale, however you want to put it, in terms of just the overall scheduling and getting the packages delivered, do you have an assessment of the impact that Mr. Groff's not working Sundays had on the program of delivering Amazon packages on Sunday?
A. Well, I was not responsible for the scheduling. I was, however, in the office on the
reactive end of things. If someone fell sick and had to go home, if there was an accident of some kind or someone just didn't show up, I had to somehow get that mail delivered. It had to be delivered; otherwise, it's your job, meaning mine.

Like I said, the jealousy angle seemed to have played a lot more of a role than it ought to have, but, again, there were some other problems -- can you please repeat the question again?
Q. Well, the Amazon packages that were to be delivered on Sundays, they got delivered; right?
A. Yes.
Q. So with or without Mr. Groff, the Postal Service was able to fulfill its obligations to Amazon to deliver packages on Sunday in the Lancaster district; right?
A. Yes. According to Federal law, you can work an employee up to 12 hours in the day so long as they have a lunch break of the appointed length and the appointed timeframe. So if you went into overtime, then penalty overtime is hour ten and beyond. When you go into penalty overtime, you could work him up until that 12th hour, but one second after, that's it.
Q. So returning to what you wrote here, the third paragraph up from the bottom.

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is widely discussed and has bred a great deal of resentment among the craft employees. When I say this, I mean anonymous towards management for the inflexible stance taken against Gerald. You see I'm not alone in my assessment of this individual.

Now, I heard you a moment ago to talk about people -- some people you heard were jealous of Gerald, but here are you saying that there are those who had resentment against management because of how Ger: was being treated?
A. There were some. The thing is that regular carriers were not required to do Sunday. And there were some people who also took their Christian faith seriously, and I had heard people -- because when this sort of thing happens people talk, word gets around.

Not just there, but when I covered in other offices, every so often someone would mention this to me, how, you know -- and Gerald wasn't the only one. There were a couple of other people, some of whom later left the Postal Service, RCAs, CCAs.
Q. When you say the inflexible stance taken against Gerald, what are you referring to?
A. Well, they were saying, and I was
hearing about this, that he had to work the Sunday Amazon; there was no option for him anymore. And they were citing the staffing issues, that sort of thing.

In response to the earlier question, the people who were telling me this, you know, about how they did not like that happening -- and some of them were actually working those Sundays -- it was always the sort of thing like they were being very quiet about it because, again, they did not want to draw too much attention to themselves.
Q. Directing your attention to the middle of this exhibit, you say, I recently was called in relation to the volunteer list for Sundays -- do you see that?
A. Yes.
Q. -- and broached the topic with the NRLC
representative. What does that refer to?
A. That's the shop steward. I'm trying to remember what level she was because you have the statio and you have the next one up and then there's one higher. I think it was the next one up who had called.
Q. For the labor Union?
A. Yes. She had called talking about the Sunday volunteer list.
Q. Who was on the call? Was it just you and this person?
Q. Soaste brdughovalia7 MS. DeBRUICKER: Objection. THE WITNESS: I don't recall if it was his name or circumstance, but I do know that we were discussing what could only have been his situation. BY MR. REINACH:
Q. Then you specifically told her your feelings about what a good worker Mr. Groff was?

MS. DeBRUICKER: Objection.
THE WITNESS: I had expressed my concern that his position and the Postal Service's position and the problem of interpretation of Federal law would cause an enormous conflict. And I felt that the best thing we could do was to have them do what they could to help him 'cause that's what their job is, at least in my view, because I can only imagine how much this is costing everybody.
BY MR. REINACH:
Q. I just want to make sure I have a clear understanding and we have a clear record of that conversation. During that conversation, did you say anything to her about what kind of worker Mr. Groff was?
A. I did say something in that direction.

Let me think a moment here. I think one of the primary
reasons I had said that I hoped they would do something was because I would hate to lose someone that I can depend on. I mean I think it was something like that, but, again, I can't remember exact words.
Q. No, that's understandable. It's been a long time.
A. It has. Yes.
Q. Now, you know, in that vein, earlier you
were testifying about difficulty hiring, staffing problems and such. Did you feel that the Postal Service was better off utilizing Mr. Groff's services on the six days of the week that he was available to work even if he was not available to work on Sundays?
A. I think the way that they were utilizing him to assist on other routes to get everything delivered the way that he did, that -- to use this phrase -- the Postal Service was more than getting their money's worth when I consider how much he did in the course of a week as opposed to what that one Sunday's delivery would mean. It was, in my mind, a no brainer.
Q. And if he had been offered the opportunity to commit to working all of the holidays which don't fall on Sundays, all ten holidays that don't fall on Sundays in place of having to work on Sundays, do you think that would have been beneficial to the Postal

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 answer if you know.THE WITNESS: Well, yeah, that would be kind of speculation, actually. Because, as you know, somi of the holidays that we have, Christmas and Thanksgiving and Easter, are oriented around the Christian religion.
So I can't speak for Mr. Groff in regard to that.
BY MR. REINACH:
Q. So just to be clear, the delivery holidays are, for example, you know, the Monday after Easter; right?
A. Oh, I understand that.
Q. So do you know whether Amazon packages were delivered on holidays like that, the Monday after Easter or the Monday that Veterans Day or Columbus Day observed?

MS. DeBRUICKER: Objection to form. You can answer if you know.

THE WITNESS: I do understand. I can go back to when I was working in Brooklyn for a moment. As Supervisor, the Junior Supervisor in the Brooklyn facility, they had initially started scheduling me to work with the carriers we sent in for Sunday Amazon. And I did tell them I wasn't happy about that because Sunday, 38
Church, religious observance, that was central to my sens of being.

And in my case, there were other supervisors who liked the idea of having Saturdays off. So I became the guy for Saturdays, and they took up the Sundays, trading back and forth that way.

Now, I think that they probably could have had an understanding of that nature if situations had allowed, if attitudes had been more accommodating. Agai that's based on my experience and what I could see with the way that people do trade days off, you know, like l'll take these weeks off and you can take those weeks off, that's great, we'll do that.
BY MR. REINACH:
Q. And if $I$ understood your earlier testimony, granted that there were scheduling challenges on Sundays for Amazon delivery, but I think I heard you to say that there were scheduling challenges on other days of the week, as well?
A. Yes.
Q. So if Mr. Groff had been asked, well, if we're gonna let you off on Sundays, we need you to step up and commit to helping us on other days during the week, that could have been beneficial to the Postal Service; right?

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Plaintiff'sAppendix000100

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Plaintiff'sAppendix000102

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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
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

## 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.
BYMR, 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 -- l'm sorty -- 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?

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| 1 | Q Correct. | 29 | 1 |  | 31 |
| :---: | :---: | :---: | :---: | :---: | :---: |
|  |  |  | 1 | So excepting or aside from those two |  |
| 2 | A I don't have a conversation, I mean, it's a |  | 2 | individuals, are you aware of any other individuals |  |
| 3 | rare -- it's very rare. In 34 years, there's no |  | 3 | within the Central Pennsylvania District who have |  |
| 4 | conversation, You know, that's kind of a casual |  | 4 | requested a religious accommodation? |  |
| 5 | thing that you -- conversation is something casual, |  | 5 | A. No. |  |
| 6 | Q. Okay |  | 6 | MS, DeBruicker: Objection as |  |
| 7 | A. I don't have conversations about religion, |  | 7 | beyond the scope. |  |
| 8 | Q. So broaden the word conversation. Any |  | 8 | But you may answer, |  |
| 9 | discussions with any of your people above you or |  | 9 | A. No. |  |
| 10 | people below you about religious accommodations? |  | 10 | Q. In your 34 years with the Postal Service, |  |
| 11 | A. Personally? |  | 11 | have you worked outside of the district of Central |  |
| 12 | Q. Yes. |  | 12 | Pennsylvania? |  |
| 13 | MS, DeBRUICKER: Objection. Beyond |  | 13 | A. Yes. |  |
| 14 | the scope of the notice. |  | 14 | Q. So l'm going to ask you my last question |  |
| 15 | A. No. No. No. |  | 15 | again, but I want to broaden it out to any time in |  |
| 16 | Q. Ever have discussions with people either |  | 16 | your service. Were you aware of any -- other than |  |
| 17 | above you or beneath you at the Postal Service |  | 17 | the two carriers -- or the two employees we just |  |
| 18 | regarding an undue burden to the Postal Service as it |  | 18 | talked about, plus Mr. Groff, any other postal |  |
| 19 | relates to a religious accommodation? |  | 19 | employees that you're aware of that requested a |  |
| 20 | MS. DeBRUICKER: Objection. Beyond |  | 20 | religious accommodation? |  |
| 21 | the scope of the notice. Also calls for a legal |  | 21 | MS. DeBRUICKER: Objection as |  |
| 22 | conclusion. |  | 22 | beyond the scope. |  |
| 23 | You may answer if you're able, |  | 23 | You can answer if you know. |  |
| 24 | A. Could you re --could say that again? |  | 24 | A. I'm just thinking of all my positions where |  |
| 25 | Q. Sure. |  | 25 | I managed carriers or clerks. |  |
| 1 | MR, CROSSETT: Would you mind | 30 | 1 | Q. Sure. Or even just heard about it. Even if | 32 |
| 2 | reading that back for me? Thank you. |  | 2 | they weren't directly under you. |  |
| 3 | (Whereupon, the reporter read back the |  | 3 | A. I don't recall any. |  |
| 4 | referred-to portion of the record.) |  | 4 | Q. You'll admit that Mr. Groff sought a |  |
| 5 | THE WITNESS: No. |  | 5 | religious accommodation of not being scheduled to |  |
| 6 | BYMR. CROSSETT: |  | 6 | work on Sundays? |  |
| 7 | Q. Are you aware of any religious accommodation |  | 7 | MS. DeBRUICKER: Objection to form, |  |
| 8 | considered by the Postal Service which was not |  | 8 | MR. CROSSETT: What's the objection |  |
| 9 | ultimately offered to Mr. Groff? |  | 9 | to the form? |  |
| 10 | A. One more time. |  | 10 | MS, DeBRUICKER: Leading. |  |
| 11 | Q. Sure. I think I can do it again. |  | 11 | MR. CROSSETT: I can lead. It's a |  |
| 12 | Are you aware of any religious |  | 12 | deposition |  |
| 13 | accommodation considered by the Postal Service that |  | 13 | MS. DeBRUICKER: Objection to the |  |
| 14 | was not ultimately offered to Mr. Groff? |  | 14 | form of the question. |  |
| 15 | A. No. |  | 15 | THE WITNESS: Could you ask me that |  |
| 16 | Q. And I think you answered this, so just -- if |  | 16 | again? |  |
| 17 | you already did, let me know. I think you already |  | 17 | MR. CROSSETT: Would you read it |  |
| 18 | told me that you're not aware of any accommodations |  | 18 | back? |  |
|  | that were offered to Mr. Groff by the Postal Service. |  | 19 | (Whereupon, the reporter read back the |  |
| 20 | is that correct? |  | 20 | referred-to portion of the record.) |  |
| 21 | A. That's correct. |  | 21 | THE WITNESS: One more time. |  |
| 22 | Q. A few minutes ago we discussed two |  | 22 | Sorry. |  |
| 23 | individuals in the Central Pennsylvania District and |  | 23 | (Whereupon, the reporter read back the |  |
| 24 | both of them had some relationship to a religious |  |  | referred-to portion of the record.) |  |
| 25 | request for time off. |  | 25 | MS. DeBRUICKER: Same objection. |  |

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| 1 | THE WITNESS: I'm told that, yes. | , |  | objection to form? | 35 |
| :---: | :---: | :---: | :---: | :---: | :---: |
| 2 | BY MR. CROSSETT: |  | 2 | MS, DeBRUICKER: Again, leading. I |  |
| 3 | Q. You'll admit that Mr. Groff was willing to |  | 3 | understand you're going to go ahead and ask your |  |
| 4 | work extra shifts during Monday through Saturday in |  | 4 | question, but my objection stands. |  |
| 5 | order not to be scheduled to work on Sunday? |  | 5 | MR, CROSSETT: And what's your |  |
| 6 | A. I have no knowledge of that. |  | 6 | objection beyond the scope? You don't think this is |  |
| 7 | MS. DeBRUICKER: Objection. That's |  | 7 | within the scope? |  |
| 8 | not even a question. |  | 8 | MS. DeBruicker: I don't. But I'm |  |
| 9 | Q. Will you admit that in 2015, while working |  | 9 | allowing her to answer. |  |
| 10 | at Quarryville, Mr. Groff was granted the |  | 10 | MR, CROSSETT: No. 1, all religious |  |
| 11 | accommodation of not being placed on the Sunday |  | 11 | accommodations provided to mail carriers. And it |  |
| 12 | schedule in exchange for working extra shifts during |  | 12 | goes on, including but not limited to religious |  |
| 13 | the week and Saturdays? |  | 13 | accommodations provided to the plaintiff. It is |  |
| 14 | MS. DeBRUICKER: Objection to the |  | 14 | squarely within the scope. |  |
| 15 | form. Objection to beyond the scope of the |  | 15 | I'm asking, in 2017, if this was an |  |
| 16 | deposition notice. |  | 16 | accommodation. She can answer it. It is definitely |  |
| 17 | MR. CROSSETT: What's your |  | 17 | within the scope. |  |
| 18 | objection to form? |  | 18 | BY MR. CROSSETT: |  |
| 19 | MS. DeBRUICKER: Again, leading. |  | 19 | Q. Do you understand the question? |  |
| 20 | BY MR CROSSETT: |  | 20 | A. No. |  |
| 21 | Q. Just so that you understand. Your attorney |  | 21 | Q. I'll read it again. |  |
| 22 | is objecting that when my question suggests the |  | 22 | A. Quite frankly, it appears that you're |  |
| 23 | answer, that it's inappropriate. |  | 23 | putting words in my mouth with the way you word it. |  |
| 24 | Just so you understand, many of my |  | 24 | But go ahead. |  |
| 25 | questions will be designed to suggest the answer. |  | 25 | Q. Do you have any knowledge of what |  |
| 1 | You can tell me if it's true or not true. But that | 34 | 1 | accommodations the Postal Service made or offered to | 36 |
| 2 | is a form of a question that's regularly used during |  | 2 | Mr. Groff in 2017? |  |
| 3 | deposition and I'll continue to use it Just so you |  | 3 | MS. DeBRUICKER: Objection. Asked |  |
| 4 | understand what is happening between your attorney |  | 4 | and answered. |  |
| 5 | and I. |  | 5 | You may answer. |  |
| 6 | MR. CROSSETT: Could you reread the |  | 6 | A. What I was informed was that they tried to |  |
| 7 | question for me? |  | 7 | accommodate him by replacing him with another |  |
| 8 | (Whereupon, the reporter read back the |  | 8 | employee when we had employees available. |  |
| 9 | referred-to portion of the record.) |  | 9 | What normally happens in the Postal |  |
| 10 | MS, DeBRUICKER: Again, objection |  | 10 | Service is it's handled at the local level. So if |  |
| 11 | to form and it's beyond the scope of the notice. |  | 11 | you come in and you need a day off for a wedding or |  |
| 12 | You can answer based on your personal |  | 12 | child's soccer game, you talk to your direct |  |
| 13 | knowledge. |  | 13 | supervisor and you request special time off. |  |
| 14 | THE WITNESS: You're asking me if I |  | 14 | Q. You had said that they tried to find others |  |
| 15 | would admit that he did -- asked those, he did |  | 15 | to work or something like that. What did you mean by |  |
| 16 | certain things or he worked certain days. I have no |  | 16 | that? |  |
| 17 | knowledge of that. |  | 17 | A. If - if there was -- you try a rotation, so |  |
| 18 | BY MR, CROSSETT: |  | 18 | you try to rotate employees in. Many times everybody |  |
| 19 | Q. Will you admit that in 2017 the Postal |  |  | works. But if somebody isn't working, then you can |  |
| 20 | Service granted Mr. Groff the accommodation of |  | 20 | request -- and they worked the week prior and it's |  |
| 21 | scheduling another RCA on each Sunday that Mr. Groff |  | 21 | their rotation not to work, you can reach out to them |  |
| 22 | was placed on the Sunday work schedule? |  | 22 | and try to see if they will work for someone else. |  |
| 23 | MS. DeBRUICKER: Objection to form |  | 23 | Q. Meaning asking for someone to volunteer? |  |
|  | and as beyond the scope. |  | 24 | A Correct. |  |
| 25 | MR, CROSSETT: What's your |  |  | Q. Are you aware whether the Postal Service did |  |

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Plaintiff'sAppendix000110

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to see what time the sun went down, if that's what
youre asking me. I can just tell you from my
Q. Here's what I want to know. I want to know
we now did some research, we know packages were
delivered in the dark and there really was a safety
issue.
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
A. Specific to him?
Q. Yes
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
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?
Q. Is that correct?
A. If you have the correct staff.
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'Il 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,

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Plaintiff'sAppendix000113

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Plaintiff'sAppendix000114

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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.
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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 govems
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

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every single RCA on a Sunday?
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                                    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.
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

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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 pos
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 possibie 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.
Q.
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. Groffs 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

| 1 | MS. DeBRUICKER: I'm happy to | 76 |
| :---: | :---: | :---: |
| 2 | rephrase my question. |  |
| 3 | MR, CROSSETT: You can lead. It's |  |
| 4 | a deposition. |  |
| 5 | MS. DeBRUICKER: We have a |  |
| 6 | disagreement as to what are proper forms for |  |
| 7 | depositions. |  |
| 8 | BY MS. DeBRUICKER: |  |
| 9 | Q. What would be the best source of information |  |
| 10 | as to hardships imposed by the absence of an RCA on |  |
| 11 | Sunday at a post office? |  |
| 12 | A. Local. |  |
| 13 | MS. DeBRUICKER: And I'll note for |  |
| 14 | the record to the extent that this witness did not |  |
| 15 | make that inquiry, we are happy to provide that |  |
| 16 | information through other forms of discovery. |  |
| 17 | With that, I have no further questions. |  |
| 18 | MR. CROSSETT: We should also note |  |
| 9 | for the record that because this client was properly |  |
| 0 | noticed for a 30(b)(6) deposition, we reserve all |  |
| 1 | rights to object to information not provided today in |  |
| 2 | this deposition, and move to exclude testimony at a |  |
| 3 | 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. |  |

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.
-

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

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GERALD E. GROFF,
    Plaintiff
No. 19-CV-1879
v.
MEGAN J. BRENNAN,
POSTMASTER GENERAL, UNITED
STATES POSTAL SERVICE,
Defendant．
No．19－CV－1879
v．
```

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

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GERALD E. GROFF,
    Plaintiff
    v.
MEGAN J. BRENNAN,
POSTMASTER GENERAL, UNITED
STATES POSTAL SERVICE,
    Defendant.,
```

        No. 19-CV-1879
    
## 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 (midNovember 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 PreDisciplinary 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 mentioned 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 Dad 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.

## 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 rellief 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 thity ( 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.


# MEMORANDUM OF UNDERSTANDING BETWEEN THE <br> UNITED STATES POSTAL SERVICE AND THE <br> 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 routes) 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.


Cathy M. Peron
Manager
Labor Relations
U.S. Postal Service


Date:


Case 5:19-cv-01879-JLS Document 37-4 Filed 02/14/20 Page 143 of 188 Harrisburg P\&DC
CPA District

## $\Rightarrow$ UNITEDSTATES

POSTIL SERVICE
DATE: June 9, 2017
SUBJECT: Letter of Warning
TO: $\quad$ Name Gerald Groff
EIN: 04128993
Position RCA
This official Letter of Warning is being issued to you for the following reason(s):

## CHARGE: Unsatisfactory Attendance-Failure to be regular in Attendance

During the period of April 16, 2017, through May 7, 2017, you were absent from duty as follows:

| April 16, 2017 | 8.00 hours | ULWOP |
| :--- | :--- | :--- |
| April 23,2017 | 8.00 hours | ULWOP |
| May 07, 2017 | 8.00 hours | ULWOP |

The three separate occasions of unscheduled absences account for a total of 24.00 hours.
A Pre-Disciplinary Interview (PDI), your day in court privilege was held on May 10, 2017 with you regarding consideration of disciplinary action against you. The interview afforded you an opportunity to give an explanation regarding the circumstances of the matter.

You were given an opportunity to provide an explanation for each one of your unscheduled absences cited above. The explanation you provided for your unscheduled absences is that Sunday's is the Sabbath day and you do not work on the Sabbath day.

Your Failure to be regular in Attendance violates but not limited to the following Postal Rules and Regulations:

## Memorandum of Understanding Between The United States Postal Service And The National Rural Letter Carriers' Association

The parties agree that rural carrier leave replacements will be assigned, as appropriate, to complete Sunday/holiday parcel deliveries.

Employee and Labor Relations Manual, Section 511.43 Employee Responsibility: Employees are expected to maintain their assigned schedule and must make every effort to avoid unscheduled absences. In addition, employees must provide acceptable evidence for absences when required.

Employee and Labor Relations Manual, Section 665.41 Requirement of Regular
Attendance: Employees are required to be regular in attendance. Failure to be regular in attendance may result in disciplinary action, including removal from the Postal Service. Your failure to comply with these regulations warrants this action.

It is hoped that this official Letter of Warning will serve to impress upon you the seriousness of your

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From: Hess, Brian M
Sent: Thu Apr 13 16:23:02 2017
To: French, Douglas C - Lancaster, PA
Subject: RE: Sunday Amazon Schedule
Importance: Normal
Attachments: image001.jpg

Was on a rural telecom at same time.
Gerald Groff was notified, but will not be reporting due to religious objection.
Information was updated on hub schedule.
Brian M. Hess
Postmaster
Holtwood Post Office
55 Drytown Rd.
Holtwood, PA 17532
717-284-2850
[Image result for usps
logos]<htps://www.google.com/url?q=htp://www.userlogos.org/logo/nickbyalongshot/02162011/uspscom\&sa=U\&ved=0ahUKEwiWxI begdjPAhWDWT4KHcxUA9A4FBDBbggWMAA\&usg=AFQICNFE9p8IKUUdHo0m4cLL4AdLTVVIUO>

From: French, Douglas C - Lancaster, PA
Sent: Thursday, April 13, 2017 12:19 PM
To: Luu, Huyen T - Smoketown, PA; Sweitzer, Jay K - Lititz, PA; Mich, Jeffrey P - Ephrata, PA; Ross, Laurie D - Lititz, PA; Horn, Brad M - Lancaster, PA; Horn, Jeanette L - Columbia, PA; 17532, Postmaster - Holtwood PA; 17547, Postmaster - Marietta PA; 17527,
Postmaster - Gap PA; 17529, Postmaster - Gordonville PA; Murray III, James - Elizabethtown, PA
Cc: Eckard, Norman - Spring Grove, PA
Subject: Sunday Amazon Schedule
I know we had some technical difficulties during the telecom and some of you were not able to dial in. If you are receiving this email it means that I was unable to verify that you notified your employees. Please send me an email that all employees were notified and also make sure you submitted the information on the hub schedule website.

Thanks
Doug

July 3, 2017
This is a PDI. I am considering discipline for your failure to report to work as scheduled / absent without official leave / failure to follow instructions. The corrective action may be up to and including a removal from the Postal Service.

Do you understand?


Are you aware of the rule requiring you to be regular in attendance?
y os

Are you aware you are required to follow the instructions of your Postmaster?
IlS - IN Holtwood

Are you aware of the requirement to call in and inform management when you are unable to report to work?
ont know how to call in here
when schedules are posted just commucncate to local postmas You were scheduled and informed by your Postmaster you were to report to work on May $21, n \mathrm{not}$ com en June 11, and July 2, is that correct?
Reinemiser july $2 n d$
Doit remember offer 2 if the 1 are sunda al 1 would assume 5 .
You did not report to work on those dates nor did you call in to inform management at the Lancaster Annex that you were unable to work. Why did you not report to work and or call in to inform management you were not reporting?

- Theneght it was covered due to telling postmaster at local office. Assuming his postmaster is telling lancaster office.
What is your religion?
Cheristram
- Chenerstanding, law wowed protect his rights What church do you attend?
Victors church - greenfuld corp center

What is the address of your church?

What time is your church service? 8 am ar 930
is there reason you arent showing

- Plaintiff'sAppendix000140

Claintif'sAppendix000140

- case hasnit charged from Day 1 Diane letter of warneng threatening ' understand my rights are proctected by law. not sure why it's still beng peroued. not trasing to canse arel trouble or problemis. Just following mul belieup. Net Hired thired pricor to Amazon sundac\%

First cherstmas - accorndation was giive

- Dicceced up extra work dering the week @ Quarngille to get ont of surdaris.
- Transfered Holtwood due tis them not nawing cluristmas amazon. gave up senority
- That's how strongly I beliece
- Altamatir given to wark christmas on (necer to find another for ar uxac chwistrmas like everione else)
- Found Holtuood. Whe didn't do xmas.

Holtwood Post Office<br>UNITED STATES<br>DATE: January 2, 2018<br>SUBJECT: Notice of 7-Day Paper Suspension<br>TO: $\quad$ Gerald Groff<br>EIN: 04128993<br>Rural Carrier Associate<br>Holtwood Post Office<br>You are being issued this seven (7) calendar day paper suspension (no-time-off) for the following reason(s):

## CHARGE: IMPROPER CONDUCT

On December 3, 2017 and December 17, 2017 you were instructed that you were to work for Sunday Amazon. You repeatedly refuse to work any of the Sundays that you are instructed to work. You have stated that you are aware of the requirement to work Sundays and you refuse because you are a Christian and it should be respected that no work should be done on a Sunday. Attempts have been made to accommodate your religious befiefs and allow you to come to work later than other employees so that you may attend church services on Sunday. You still refuse to comply with the requirement for you to work Sundays stating that an actual reasonable accommodation would be to not have to work at all.

During your pre-disciplinary interview on December 20, 2017 you admitted that you are aware that you required to be regular in attendance. You also admitted that you are aware that the United States Postal Service is a $24 / 7$ operations and that working Sundays and holidays is a requirement. You also admitted that the Postal Service has attempted to make an accommodation for you to report later than scheduled so that you can attend church services, however, you stated that is not reasonable and that you need the entire day off.

Your actions are in violation of, but not limited to the following:

## Employee and Labor Relations Manual

Section 665.13 Discharge of Duties
Employees are expected to discharge their assigned duties conscientiously and effectively,

## Section 665.15 Obedience to Orders

Employees must obey the instructions of their supervisors. If an employee has reason to question the propriety of a supervisor's order, the individual must nevertheless carry out the order and may immediately file a protest in writing to the official in charge of the installation or may appeal through official channels.

Section 665.16 Behavior and Personal Habits
Employees are expected to conduct themselves during and outside of working hours in a manner that reflects favorably upon the Postal Service. Although it is not the policy of the Postal Service to interfere with the private lives of employees, it

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From: Gaines, Lyle V - Harrisburg, PA
Sent: Tue Mar 20 15:10:48 2018
To: Hess, Brian M
Subject: Groff Religious Reasonable Accommodation
Importance: Normal

Lyle Gaines invites you to join an online meeting using WebEx.
Please note, you do NOT need a WebEx account to join the meeting.
Meeting Number: 747698390
Meeting Password: This meeting does not require a password.

To join this meeting (Now from mobile devices!)

1. Go to https://uspsmeetings.webex.com/uspsmeetings/j.php?MTID=m7ee5656f04e(0d3b5e6ff43571fca5IIf
2. If requested, enter your name and email address.
3. If a password is required, enter the meeting password: This meeting does not require a password.
4. Click "Join".
5. Follow the instructions that appear on your screen.

Teleconference information
Provide your phone number when you join the meeting to receive a call back. Alternatively, you can call:
Call-in toll-free number: 1-855-8607461 (US)
Call-in number: 1-678-3172063 (US)
Show global numbers: https://www.tcconline.com/offSite/OffSiteController.jpf?cc=8896046552
Conference Code: 8896046552
https://www.webex.com
CCP:+16783172063x8896046552\#
IMPORTANT NOTICE: This WebEx service includes a feature that allows audio and any documents and other materials exchanged or viewed during the session to be recorded. By joining this session, you automatically consent to such recordings. If you do not consent to the recording, discuss your concerns with the meeting host prior to the start of the recording or do not join the session. Please note that any such recordings may be subject to discovery in the event of litigation.

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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:Iyle.v.gaines@usps.gov](mailto:Iyle.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](mailto:john.w.brodbeck.jr@usps.gov); Zehring, Aaron S - Lancaster, PA
[Aaron.S.Zehring@usps.gov](mailto:Aaron.S.Zehring@usps.gov); Evans, Diane M - Lancaster, PA [Diane.M.Evans@usps.gov](mailto:Diane.M.Evans@usps.gov); Miller, Kelly M - Peach Bottom, PA
[Kelly.M.Miller@usps.gov](mailto:Kelly.M.Miller@usps.gov)
Cc: Gaines, Lyle V - Harrisburg, PA [lyle.v.gaines@usps.gov](mailto:lyle.v.gaines@usps.gov); Hess, Brian M [Brian.M.Hess@usps.gov](mailto: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.
Plaintiff'sAppendix000144

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Brian M. Hess
Postmaster
Holtwood Post Office
55 Drytown Rd
Holtwood, PA 17532
717-284-2850
[USPS Logo][https://www.usps.com/](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](mailto:Brian.M.Hess@usps.gov)>
Cc: Mccabe, Suzanne B - Philadelphia, PA <Suzanne.B.Mccabe@usps.gov[mailto:Suzanne.B.Mccabe@usps.gov](mailto:Suzanne.B.Mccabe@usps.gov)>; Breymaier, Susan X - Memphis, TN <susan.x.breymaier@usps.gov[mailto: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(a)usps.gov<mailo:Iyle.v.gaines@usps.gov> | fax 650-578-3354
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From: Hess, Brian M
Sent: Tucsday, Junc 05, 2018 10:04 AM
To: Gaines, Lyle V - Harrisburg, PA <lyle.v.gaines@usps.gov[mailo:lyle.v.gaines@usps.gov](mailo:lyle.v.gaines@usps.gov)>
Subject: Gerald Groff update / IMIP Adavice
Lyle,
Just wondering if you have any updates on Gerald Groff's religious accommodation request?
Brian M. Hess
Postmaster
Holtwood Post Office 55 Drytown Rd
Holtwood, PA 17532
[USPS Logo] [https://www.usps.com/](https://www.usps.com/)

CENTRAL. PA DISTRICT

Und $5=5$
Prome 5ravare

July 17, 2018
USPS Tracking \# 9114901189866909994106

Gerald Groff
12 RIDGEDALE AVE
New Providence PA 17560-9680

RE: Gerald Groff Religious Accommodation

Dear Mr. Groff

Thank you for meeting with me on your request for a Religious Accommodation, via telephone. At the request of your Postmaster I am providing this written response.

## Religious Accommodation Meeting:

The undersigned met with you and you were allowed representation prior to discussing a religious accommodation. Present during this meeting, was the OIC Brain Hess. You were provided an opportunity to provide information as it relates to your request. Management offered you the opportunity to work on a modified schedule to accommodate you during the hours of scheduled worship on Sundays. Your response to that offer was that you required no work on Sunday in accordance with the Forth Commandment. You also added that you would resign your position with the Postal Service if you were required to work on Sunday (As you indicated in response to my clarification that you recognize the Sabbath as Sunday).

## Decision:

Since our meeting it was communicated to your Postmaster that we must make attempts to find volunteers in order to provide you the accommodation that you seek. I have considered all information provided by you and in accordance with the above. Other than attempting to find volunteers, the only other alternative; is to allow you to have a modified scheduled the same as other employeeg equally situated to you.


Lyle $V$ Gaines
Manager, Labor Relations

# CORNERSTONE LAW FIRM 

8500 Allentown Pike, Suite 3
Blandon, PA 19510
February 11, 2020
Via Email: veronica.finkelstein@usdoj.gov
Veronica J. Finkelstein, Esquire
Assistant United States Attorney
615 Chestnut Street, Suite 1250
Philadelphia, PA 19106

## RE: Good Faith Efforts re Joint Stipulation of Undisputed Facts Groff v. USPS, 2019-CV-1879

Dear Counsel:
Please accept this letter as a final good faith effort to resolve disagreements about the jointstipulation of material, undisputed facts (the "Joint-Stipulation"). On January 29, 2020, undersigned counsel for Plaintiff submitted for your review a First Draft of the Joint-Stipulation (the "First Draft"). On February 1, 2020, you submitted a series of revisions (the "Second Draft") with comments. On February 4, 2020, undersigned counsel for Plaintiff submitted to you a Third Draft (the "Third Draft"), which incorporated some of your changes and rejected others, and provided detailed explanation. Your response was by e-mail dated February 8, 2020, and you merely said that what you offered in the Second Draft was a take it or leave it offer. Despite request by Plaintiff's counsel, you provided no response or explanation for your positions.

By way of summary, your assertions are pervasively non-responsive to the comments that we submitted to you, asking why you are proposing to delete facts predicated on Defendants' witnesses and documents, including testimony by the U.S. Postal Service corporate representative under Fed. R. Civ. P. $30(\mathrm{~b})(6)$. Indeed, the comments we submitted to you in the Third Draft repeatedly pointed out, "The obligation of Defendants to cooperate in good faith includes the need to concede undisputed facts by Defendants' own witnesses." Plaintiff's counsel has counted at least 20 proposed deletions from the Third Draft by Defendants that were based on Groff's undisputed testimony. More significantly, however, is that Defendants have proposed 42 proposed deletions from the Third Draft that were based on Defendants' own witnesses and documents. These are shown below as Defendants' Proposed Deletion Nos. 1 through 37, as well as the proposed deletion of Third Draft Proposed Facts Nos. 13 and 35 to 38.

Your objections, therefore, have a ratio of 2-to-1 that you're seeking to exclude undisputed facts established by Defendants' evidence. Moreover, out of Defendants' Proposed Deletions Nos. 1 through 37, below, approximately 29 of these have no explanation from you as to why the same were objectionable. That's about $78.4 \%$, or more than three-fourths, of your proposed deletions concerning evidence established by Defendants' witnesses and documents. For other proposed deletions by Defendants, you offer conclusory assertions that the testimony was misconstrued, but

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you don't explain how or otherwise offer a correction. A review of the record shows that Plaintiff's counsel did not misconstrue the same.

Here, Plaintiff is incurring prejudice at summary judgment by Defendants' failure to concede facts established by Defendants' own witnesses and documents, including minimal facts established by the Rule 30(b)(6) corporate representative. As you should know, Judge Schmehl's Policies and Procedures require that "parties opposing summary judgment motions to cooperate in preparing such stipulations." Your current position is clearly a bad faith failure to cooperate in preparing such stipulations.

Please safeguard the fairness of the Joint-Stipulation, and avoid any impairment of fairness to this proceeding, by including the proposed facts described below or, alternatively, articulate a responsive, good faith basis for their exclusion from the Joint-Stipulation with citation to the record as the basis for disputing the same. If I do not receive written consent to your stipulation to these proposed facts by 2:00 p.m. on February 12, 2020, I will understand that you are maintaining your position and will submit to the Court the joint stipulation as attached to your email dated February 8, 2020.

The balance of this letter will give more specificity, but your position on the proposed facts demonstrates a disregard for the proper standard for summary judgment. Defendants are not free to dispute facts through "metaphysical doubts." Matsushita Elec. Industrial Co. v. Zenith Radio Corp., 474 U.S. 575, 586-87 (1986). That limits Defendants' options to the following: (1) accept a deponent's testimony as correct, (2) identify a proper objection under the Federal Rules of Evidence, or (3) affirmatively adduce record evidence to dispute it before the discovery deadline. What is not an option is to do nothing and then make comments, as you did for USPS Postmaster Roger Sheddy (Third Draft Proposed Fact No. 13), "we have no idea if he's correct."

## A. Facts Established by Defendants' Witnesses and Documents.

This section contains each fact established by Defendants' own witnesses and documents in the Third Draft, which you proposed to be deleted from the Joint-Stipulation. Plaintiff respectfully submits that exclusion of these proposed facts substantially impairs the fairness of the proceeding due to a bad faith unwillingness by Defendants to concede their own evidence.

## Defendants' Proposed Deletion No. 1.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 12: "In the Central Pennsylvania District, | Besides Groff, USPS Postmaster Brian Hess |
| before implementing the Amazon contract, | testified about a teleconference on the |
| RCAs did not have to work on Sundays; but as | Amazon contract which was held "because |
| a result of that contract, all RCAs became | RCAs had never had to work Sundays in the |
| required to work on Sundays. [Hess Dep. 74:1- | past." [Hess Dep. 74:1-14]. |
| 14; Evans Dep. 14:15-22; Groff Dep. 141:10- | Diane Evans, USPS Supervisor at the |
| 12]." | Lancaster County Annex for scheduling |
|  | Amazon deliveries, testified: |
|  | Q. So prior to implementing Sunday |


|  |
| :--- |
| delivery, RCAs didn't have to work on |
| Sundays; right? |
| A. No. |
| [Evans Dep. 14:15-22]. Finally, Groff |
| testified, "Never in my seven years as an |
| employee, did anyone I know deliver |
| Sundays with priority mail." [Groff Dep. |
| $141: 9-12]$. |

You originally commented that you could not endorse whether that was true "nationwide." Plaintiff therefore, in the Third Draft, limited the scope to "In the Central Pennsylvania District." Now you have proposed deletion of the whole thing without explanation.

## Defendants' Proposed Deletion No. 2.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 18: "No one at USPS doubted the sincerity <br> of Groff's religious belief concerning the | Groff's Postmaster was Brian Hess, who <br> testified: |
| Sunday Sabbath-i.e., that he was prohibited <br> from working for the USPS on Sunday. | Q. At any time did you question the sincerity <br> of Mr. Groff's religious belief about not <br> [Gaines Dep. 86:14-17; Hess Dep. 15:19-22]." <br> working on Sunday? |
|  | A. No. <br> [Hess Dep. 15:19-22]. |
|  | Lyle Gaines, the District Manager for Labor <br> Relations in USPS, testified that he never <br> doubted the sincerity of Groff's religious <br> convictions, but "I actually admired his <br> convictions." [Gaines Dep. 86:14-17]. |

You have twice proposed deletion without explanation.

## Defendants' Proposed Deletion No. 3.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 39: "When implementing Amazon <br> deliveries in the Central Pennsylvania District, <br> it was the policy of USPS to permit non-career | Lyle Gaines testified, "Our decision was to <br> allow him [Groff] to go and worship on the <br> employees to attend morning religious services |
| he wanted nothing less han Sabsath . . . and |  |
| on Sunday, provided they worked the rest of | Sunday." [Gaines Dep. 56:2-21]. |
| the day."[Gaines Dep. $55: 1-19,56: 2-18$, |  |
| 82:18-25 to 83:1-3]." |  |


| Diane Evans, in charge of scheduling <br> Amazon deliveries at the Lancaster County <br> Annex for USPS, testified: <br> Q. And was that widely known that that was <br> okay if people wanted to come in after <br> church? |
| :--- |
|  |
| A. Yes. |
| Q. It was communicated to the RCAs? |
| A. Yes. |
| [Evans Dep. 19:1-7]. |

You have twice proposed deletion without explanation.
Defendants' Proposed Deletion No. 4.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 46: "By letter dated July 17, 2018, Lyle V. | Lyle Gaines verified his signature and his <br> Gaines, the District Manager for Labor |
| authorship of this letter at his deposition: |  |
| Relations, informed Groff, 'Management | Q. So we have provided Exhibit 3 to the |
| offered you the opportunity to work on a | witness. It bears the Bate No. P001. It's a |
| modified schedule to accommodate you during | letter dated July 17, 2018. Is that your |
| the hours of scheduled worship on Sundays. | signature at the bottom, sir? |
| Your response to that offer was that you | A. Yes, that is. |
| required no work on Sunday in accordance | Q. Did you draft this letter.? |
| with the Fourth Commandment.' [P001]. | A. Yes, I did. |
| Therefore, 'Since our meeting it was  <br> communicated to your Postmaster that we Q. And you wrote to Mr. Groff? <br> must make attempts to find volunteers in order A. Yes, I did. <br> to provide you the accommodation that you [Gaines Dep. 46:14-22]. <br> seek. I have considered all information  <br> provided by you and in accordance with the  <br> above. Other than attempting to find  <br> volunteers, the only other alternative is to  <br> allow you to have a modified schedule the  <br> same as other employees equally situated to  <br> you.' [Id.]."  |  |

You have twice proposed deleting a verbatim quote from Gaines' letter without articulating any objection or basis for doing so.

## Defendants' Proposed Deletion No. 5.

## Record Basis

No. 47: "USPS managers understood allowing Groff to attend Sunday-morning religious services did not remove the conflict with his sincerely-held religious belief concerning the avoidance of secular work for the entirety of the Sunday Sabbath. [Gaines Dep. 58:4-21; Hess Dep. 32:3-11]."

Postmaster Hess testified:
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.
[Hess Dep. 32:3-11]. Lyle Gaines testified:
Q. But you understood that the belief that he reported to you was not to work anytime during Sunday?
A. Yes.
Q. So that included Sunday afternoon and Sunday evening; Right?
A. That is correct.
[Gaines Dep. 58:4-21] Gaines also testified:
Q. And at any time did you look into the possibility that Mr. Groff could be required to pick up extra shifts during the week in place of having to work Sundays?
A. I don't recall whether I did or not.
[Gaines Dep. 74:10-14].

You commented that Plaintiff misquoted the testimony, without explanation. Your assertion is not made in good faith-the testimony was properly quoted.

Defendants' Proposed Deletion No. 6.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| "While considering Groff's request for a | Q. And at any time did you look into the |
| religious accommodation, Gaines could not | possibility that Mr. Groff could be required |
| recall if he ever considered whether Groff | to pick up extra shifts during the week in |
| could pick-up additional shifts during the | place of having to work Sundays? |
| regular workweek in lieu of Sunday deliveries. | A. I don't recall whether I did or not. |
| [Gaines Dep. 74:10-14]." | [Gaines Dep. 74:10-14]. |

You have twice proposed deletion without explanation.
Defendants' Proposed Deletion No. 7.

| Third Draft Proposed Fact | Record Basis |
| :---: | :---: |

No. 48: "When implementing Amazon deliveries in the Central Pennsylvania District, USPS did not 'schedule based on religious beliefs or faith systems. We schedule based on the needs of the operation.' [Gaines Dep. 52:925 to 53:1-3]. Non-career employees 'will be scheduled on Sunday. Whether they work or not is an individual question.' [Gaines Dep. 51:13-23]."
Q. So we've been discussing the status of non-career employees and the fact that, in this district, Sunday has been a consistent obligation such that, regardless of which craft, which position, individuals-noncareer employees would sooner or later need to be working on Sundays-would be scheduled on Sundays to be more precise.
*** Does the same hold true with respect to those who observe the Sabbath sundown Friday to sundown Saturday? Would they inevitably also-as non-career employees here in the Central Pennsylvania District, would they also inevitably be scheduled to work in conflict with their Sabbath?
***
A. Well, it's possible. They're scheduled when they're scheduled. I mean, we don't schedule based on religious beliefs or faith systems. We schedule based on the needs of the operation.
[Gaines Dep. 52:9-25 to 53:1-3]. Gaines also testified:
Q. Well, so individuals whose belief is not to work on Sundays, they can get hired by the Postal Service here in the Central Pennsylvania District, but if they're going to work for the Postal Service here, they're going to work on Sundays regardless of their belief. Isn't that true?
***
A. No, I don't believe that to be a true statement either. They will be scheduled on Sunday. Whether they work or not is an individual question.
[Gaines Dep. 51:13-23].

You have twice proposed deletion without explanation.
Defendants' Proposed Deletion No. 8.
Third Draft Proposed Fact
Record Basis

No. 49: "Lancaster City Postmaster Douglas French notified Hess concerning Sunday Amazon deliveries, 'we're going to keep [Groff] on this schedule, and if he's not willing to the flexible start time, we'll have to pursue discipline.' [Hess Dep. 108:15-25 to 109:1-12 (alteration added)]."

Hess testified as follows:
Q. So at that time did you think that taking Gerald off the Sunday schedule was a possibility?
A. This was at the very early onset before we were trying to work out what the accommodation would be. And I think Doug's response was, no, he's still on the schedule, and he will be scheduled as needed.
Q. When you had this exchange with Doug French at the beginning, did he ever explain to you why the Postal Service would keep someone on the Sunday schedule whose religion prevented them from working on Sundays?
A. This was after the point of him being offered-Gerald being offered the flexible start time. And he was like, we're going to keep him on this schedule, and if he's not willing to the flexible start time, we'll have to pursue discipline.
[Hess Dep. 108:15-25 to 109:1-12].

You commented that this was not his testimony, without explanation. Your assertion is not made in good faith-it was his testimony.

## Defendants' Proposed Deletion No. 9.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| "In 2017, 2018, and 2019, Groff's was the | Deborah Gless, the District Manager for the |
| only religious accommodation request for | Central Pennsylvania, was the Civil Rule |
| Sunday Sabbath observance in the Central | 30(b)(6) corporate representative for USPS. |
| Pennsylvania District. [Gless Corp. Rep. Dep. | Her Rule 30(b)(6) Notice contained as Item <br> 22:12-19]. <br>  <br>  <br>  <br>  <br>  <br>  <br>  <br>  <br>  <br>  <br> No. 2: "All mail carriers within the relevant District <br> from the time of Plaintiff's hire to the <br> present, including but not limited to all <br>  <br>  <br>  <br>  <br>  <br>  <br>  <br>  <br>  <br>  <br>  <br>  <br>  <br>  <br> Peligious accommodated provided to <br> testified as follows: <br> Q. So it's been approximately three years <br> that you've been either detailed or actually |

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|  | 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. |  |
| [Gless Corp. Rep. Dep. 22:12-19]. |  |

You commented, "Your question in the dep was what SHE was aware of. Not whether there were any. I'm aware that it was a $30[b][6]$ dep but she was only answering the questions you asked. And you asked about her knowledge." Your assertion is not in good faith for the following reasons: First, Civil Rule 30(b)(6) reads, "The persons designated must testify about information known or reasonably available to the organization." That draws no distinction between knowledge that is personal or acquired and the question put to Ms. Gless, likewise, drew no such distinction because it makes no difference. Your proffered distinction that Ms. Gless testified about "her knowledge" is expressly foreclosed by Civil Rule 30(b)(6). Furthermore, Civil Rule 30(b)(6) "places the burden of identifying responsive witnesses for a corporation on the corporation." Black Horse Lane Assocs. v. Dow Chem. Corp., 228 F.3d 272, 303 (3d Cir. 2000). USPS was dutybound to select a witness who had knowledge-personal or acquired-on the matters for examination. USPS cannot avoid Civil Rule 30(b)(6) on the basis that the witness spoke from personal knowledge, because that is the very reason why the witness was selected in the first place. Plaintiff's Civil Rule 30(b)(6) Notice contained Item No. 2, which put the defense on notice that the corporate representative had to be prepared to discuss religious accommodations other than Groff's in the Central Pennsylvania District.

Your objection has such patent frivolity as to constitute bad faith. Second, you do not point to any record evidence of any other non-career employee who submitted a religious accommodation for Sunday Sabbath observance in the Central Pennsylvania District.

Defendants' Proposed Deletion No. 10.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 52: "USPS policy required managers to | Besides Groff, Brian Hess testified: |
| perform a Pre-Disciplinary Interview ("PDI") | Q. There's reference to you were concerned |
| prior to issuing progressive discipline. [Groff | that-in early 2018, that the discipline |
| Dep. 209:4-6]." | process was taking longer than 30 days and <br>  <br>  <br> 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. |
|  | [Hess Dep. 54:25 to 55:1-6] |
|  | Lyle Gaines testified as follows: |

Plaintiff'sAppendix000154

| Q. [E]xplain a little more precisely when a <br> request is submitted to Labor Relations, what <br> role Labor Relations has in making the <br> decision to issue that discipline. |  |
| :--- | :--- |
|  | A. Labor Relations doesn't make decisions <br> as it relates to taking corrective action. How <br> the process goes is the individual would <br> bring whoever it is that they're taking <br> corrective action against into what's called <br> an investigative interview, as part of just <br> cause under the contractual provisions of <br> each particular graft. They would ask them <br> questions about it, and there's several tests |
| for just cause. *** |  |
| [Gaines Dep. 32:22-25 to 33:1-19]. |  |$\quad$| Douglas French, from the Lancaster County |
| :--- |
| Annex, testified: "I order to issue any |
| discipline, you would have to conduct a PDI |
| first." [French Dep. 39:7-8]. |

We cited Groff but this is a basic fact established by multiple defense witnesses, including Postmaster Brian Hess, District Manager for Labor Relations Lyle Gaines, and Postmaster Douglas French from the Lancaster County Annex. What is your good faith basis for disputing it? Your objection is almost as bad as objecting that $1+1=2$.

Defendants' Proposed Deletion No. 11.

| Third Draft Fact Proposed Fact | Record Basis |
| :--- | :--- |
| No. 59: "One June 9, 2017, USPS issued a <br> Letter of Warning to Groff for not working the <br> following Sundays: Apri1 16, 2017, April 23, <br> 2017, and May 7, 2017. [USPS1697]." | ground for discipline. |

You have twice proposed deletion without explanation.
Defendants' Proposed Deletion No. 12.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 61: "Under USPS policy in the Central <br> Pennsylvania District, however, the pendency <br> of an EEO request did not impact or delay the <br> imposition of discipline on Groff for not | Qaines testified as follows: |
| Qor you recall whether he had filed an |  |
| working on Sunday. [Gaines Dep. 28:4-18]." |  |


| A. I don't recall. I believe-my recollection |
| :--- | :--- |
| tells me that an EEO was filed. *** |
| Q. What impact, if any, would his having |
| filed that EEO have on the issuance of |
| subsequent discipline? |
| A. It shouldn't have any impact. |
| Q. So the Postal Service would not |
| necessarily delay further issuance of |
| discipline simply because he filed an EEO? |
| A. I don't see how the EEO should have any |
| impact on any decision that the Postal |
| Service makes. |
| [Gaines Dep. 28:4-18] |

You have twice proposed deletion without explanation.
Defendants' Proposed Deletion No. 13.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 63: "Groff filed an EEO Complaint with | This document is the same as Defendants' |
| USPS on October 6, 2017. [P101-07]. | USPS62-68. |

You have twice proposed deletion without explanation.

## Defendants' Proposed Deletion No. 14.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 73: "Having received the 14-Day Paper | Gaines testified: |
| Suspension, Gaines explained that the next |  |
| step for Groff would be termination, and any |  |
| single Sunday absence by Groff was 'not | Q. Given your understanding of Postal <br> protected from corrective action.' [Gaines <br> Dep. $62: 6-22, ~ 64: 3-8] . " ~$ |
|  | continued policies and practices, if Mr. Groff <br> how many Sunday absences could he have <br> accumulated before removal would have <br> been required? |
|  | A. Well, that would be a question that you <br> would have to ask the installation head, <br> which would have been Mr. Hess at that time <br> or whoever was in the position because he <br> was the OIC. I don't think he was the <br> Postmaster at that time, so he was acting as <br> the Postmaster. |


| Like I said previously, the rules have to be <br> consistently and equitably enforced for <br> individuals that are equally situated to Mr. <br> Groff. *** <br> Q. Do you think that it's appropriate for the <br> Postal Service to require someone on pain of <br> discipline to violate their belief about <br> observance of the Sabbath? <br> A. I think I previously answered that <br> question. The Postal Service doesn't take <br> corrective action against the employees <br> based on the reason why they didn't come <br> back. The decision was based on whether <br> they were regulation in attendance or not. <br> And if they don't schedule those absences in <br> advance, they are held against them just like <br> any other employee. <br> Whether they went to the ball game like you <br> just illustrated earlier, whether they went to <br> the movies, whether they were actually sick, <br> even when an employee is legitimately ill, <br> unless that absence is covered by the Family <br> Medical Leave Act, it's not protected from <br> corrective action. <br> [Gaines Dep. 62:6-22, 64:3-8]. |
| :--- |

You commented to the First Draft, "Again, this was not his testimony." We asked to explain and you did not. You have not articulated a good faith objection to Mr. Gaines' testimony that any further Sunday absences were "not protected from corrective action." That Gaines gave longwinded answers is not an objection.

## Defendants' Proposed Deletion No. 15.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 74: "Groff's chances of continuing to be | Gaines testified as follows: |
| scheduled for Sunday Amazon deliveries were | Q. And he [Groff] was at a point, even after |
| '99.9 percent' regardless of which post office | six years, where you're saying there was no |
| Groff worked in, according to Gaines, because | place for him to work where he would not |
| Groff was an RCA. [Gaines Dep. 49:1-13]." | have to work on Sundays? |
|  | A. Based on his category of status as an |
|  | RCA, his category of employment, the |
|  | chances of him working on Sundays would |
|  | be 99.9 percent whether he went from Rural |
|  | Carrier craft, City Carrier craft or the Clerk |

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|  | Craft or the Mail Handler craft. * * * That's <br> just the nature of the non-career position in <br> the Postal Service. <br> [Gaines Dep. 49:1-13]. |
| :--- | :--- |

You commented to the First Draft, "You can't just misconstrue the testimony and expect that the USPS will agree with it." We responded, "Your assertion that testimony was misconstrued is made in bad faith and the fact that you do not explain how it was misconstrued is also bad faith. The obligation of Defendants to cooperate in good faith incudes the need to concede undisputed facts by Defendants' own witnesses." You have since then offered no explanation how Gaines' testimony was misconstrued, and a review of Page 49 of his deposition shows that it was not.

## Defendants' Proposed Deletion No. 16.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 75: "Postmaster Hess lacked discretion not | Gaines testified: |
| to terminate Groff if he continued to | Q. So are you saying that his Postmaster had |
| accumulate unexcused Sunday absences, | the discretion to simply permit him to miss |
| because postmasters and supervisors lack | scheduled Sundays and never issue the |
| discretion, and their failure to follow the rules | removal? |
| by not terminating Groff would subject a | A. I'm not saying that his Postmaster had the |
| postmaster to possible discipline for not | discretion. I told you my testimony was that |
| enforcing the rules. [Gaines Dep. 62:6-22, | his Postmaster had a responsibility to control |
| 65:19-25 to 66:1-22]." | unscheduled absences in accordance with the |
|  | ELM provisions. That's his responsibility. * |
|  | ** |
|  | And just like I said, Mr. Groff's decision to |
|  | take off or M. Groff's decision about his |
|  | employment is his decision, which prompts |
|  | the decision by the manager. And when his |
|  | manager doesn't do what they're required to |
|  | do based on a decision to act or not act, then |
|  | the next higher level manager makes a |
|  | decision about his employment. |
|  | Q. So if I understand what you just told me, |
|  | if Brian Hess, as Mr. Groff's supervisor, had |
|  | allowed Mr. Groff to accumulate |
|  | unscheduled Sunday absences without |
|  | issuing him discipline, sooner or later Mr. |
|  | Hess would have been subject to discipline |
|  | for failure to carry out his own |
| responsibilities? |  |
|  | A. That would be a possibility. |
|  | [Gaines Dep. 62:6-22, 65:19-25 to 66:1-22]. |
|  |  |

You commented to the First Draft, "You can't just misconstrue the testimony and expect that the USPS will agree with it." We responded, "Your assertion that testimony was misconstrued is made in bad faith and the fact that you do not explain how it was misconstrued is also bad faith. The obligation of Defendants to cooperate in good faith incudes the need to concede undisputed facts by Defendants' own witnesses." You have since then offered no explanation how Gaines' testimony was misconstrued, and a review of his deposition shows that it was not.

Defendants' Proposed Deletion No. 17.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 76: "Brian Hess agreed that if any of his | Hess testified: |
| employees missed a Sunday shift, then that | Q. You said you can't discipline one person |
| employee had to be disciplined. [Hess Dep. | and let someone else get away with it. So <br> $97: 24-25$ <br> to 98:1-7]. |
|  | you understood that anybody who wasn't <br> working on Sundays when scheduled needed <br> to be disciplined the same. Is that correct? |
|  | A. Correct. |
|  | [Hess Dep. 97:24-25 to 98:1-7]. |

You have twice proposed deletion without explanation.

## Defendants' Proposed Deletion No. 18.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 78: "On or about March 4, 2019, Groff <br> contacted an Equal Employment Opportunity <br> counselor at USPS and requested pre- <br> complaint counseling, alleging that he was <br> forced to resign his RCA position because <br> USPS failed to accommodate his religious <br> beliefs. [P645-46]." |  |

You have twice proposed deletion without explanation.

## Defendants' Proposed Deletion No. 19.

| Third Draft Proposed Fact | Record Basis |
| :---: | :---: |
| No. 88: "As early as March 15, 2017, Hess informed French that Groff had requested a religious accommodation to not work Sundays. [French Dep. 9:18-25 to 10:1-18]. French took no action in respect of that information and had no interactions with Diane Evans concerning the discipline imposed on Groff. [Id. at 14:1-4, 38:7-23]." | Douglas French was postmaster at Lancaster City and in the Lancaster County Annex. He testified as follows: <br> Q. So we've marked as Exhibit 1 an e-mail bearing the Bate No. 00172. It was apparently part of an Affidavit, Page 1925. It also bears USPS Bate No. 228. <br> And I direct your attention to the from body here where it says from Brian M. Hess to Douglas C. French, Wednesday, March 15, 2017. Do you see that? <br> A. Yes. <br> Q. Have you had a chance to review what the e-mail says? <br> A. I've just read it. Yes. <br> Q. So this e-mail informed you about Mr. Groff not wanting to work on Sunday. Is that correct? <br> A. Yes. <br> Q. And what did you understand was his reason for not wanting to work Sundays? <br> A. ${ }^{* * *}$ all I know Is the information from the e-mail (indicating). According to this, to his faith he does not believe in working Sundays. <br> [French Dep. 9:18-25 to 10:1-18]. Also: <br> Q. When you received this e-mail, did you take any action in response? $\text { A. } * * * \text { No. }$ <br> Q. You didn't have any interaction with Ms. Evans concerning the issuance of this discipline? <br> A. Not specifically for the-if you're asking me if I demanded her to issue this discipline, no, I did not. <br> [French Dep. 14:1-4, 38:7-23]. |

You commented to the First Draft, "This is not his testimony," without further explanation. We responded by quoting the transcript and asked, "If Plaintiff has misread his testimony, then please explain with specificity." You have not done so.

## Defendant's Proposed Deletion No. 20.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 90: "During the non-peak season, it <br> sometimes happened that an RCA worked until <br> 9 or 10 p.m. [French Dep. 17:1-18]." | French testified: <br> Q. But the question is, what did you mean by <br> reasonable time as far as when carriers <br> delivering packages for Amazon on Sundays <br> would complete their routes? |
|  | A. $* * *$ Have we ever had people out there <br> until 9 or 10 o'clock at night? Yes we have. <br> [French Dep. 17:1-18] |

You have twice proposed deletion without explanation.
Defendants' Proposed Deletion No. 21.

| Third Draft Proposed Fact | Record Basis |
| :---: | :---: |
| No. 91: "'Penalty overtime' pay is not triggered unless an employee works 10 or more hours in one day. [Sheddy Dep. 29:1323]." | Roger Sheddy was USPS Postmaster at Christiana. He testified; <br> Q. So with or without Mr. Groff, the Postal Service was able to fulfill its obligations to Amazon to deliver packages on Sunday in the Lancaster district; right? <br> A. yes. According to Federal law, you can work an employee up to 12 hours in the day so long as they have a lunch break of the appointed length and the appointed timeframe. So if you went into overtime, then penalty overtime is hour ten and beyond. <br> [Sheddy Dep. 29:13-23]. |

You have twice proposed deletion without explanation.

## Defendants' Proposed Deletion No. 22.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 92: "Evans was never informed that Groff | Diane Evans, a supervisor at the Lancaster |
| had requested a religious accommodation until | County Annex, testified: |
| Aaron Zehring conducted a Pre-Disciplinary | Q. Did you learn why he didn't work on |
| Interview with him on April 5, 2017. [Evans | Sundays? |
| Dep. 26:1-9]." | A. I found out after I believe it was Aaron |
|  | did a PDI with him. I didn't know anything |
|  | prior to that. |
|  | [Evans Dep. 26:1-9]. |

You have twice proposed deletion without explanation.

## Defendants' Proposed Deletion No. 23.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 93: "After learning about Groff's religious | Evans testified: |
| accommodation request, Evans began | Q. So did you wait until you got a call from |
| automatically scheduling an extra RCA to | him on Saturday or try to schedule someone |
| work Groff's shift in advance. [Evans Dep. | else or you knew in advance and would |
| 27:9-15]." | 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. |
|  | [Evans Dep. 27:9-15]. |
|  |  |

You have twice proposed deletion without explanation.

## Defendants' Proposed Deletion No. 24.

| Third Draft Proposed Fact | Record Basis |
| :---: | :---: |
| No. 94: "According to the USPS Rule 30(b)(6) corporate representative, USPS incurred no hardship by passing over Groff's name on the Sunday list and scheduling another RCA for Sunday duty. [Gless Corp. Rep. Dep. 50:11-25 to 51:1-4, 52:16-25 to 53:1-10]. | The USPS corporate representative testified: <br> 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? <br> A. If you have someone, yes, to replace him. [Gless Corp. Rep. Dep. 50:11-25 to 51:1-4]. <br> 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 this spot. *** <br> In that situation, I just need to know what negative impact, if any, resulted in the Postal Service from Mr. Groff not coming in in that situation? <br> A. In that situation? Wouldn't have had an impact. <br> [Gless Corp. Rep. Dep. 52:16-25 to 53:1-10]. |

You have twice proposed deletion without explanation.

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## Defendants' Proposed Deletion No. 25.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 96: "In the July 31, 2018 e-mail, Hess | This is a verbatim quote from Defendants' |
| wrote, 'It is my understanding that when the | USPS3324. |
| Lancaster County 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.' [USPS3324 |  |
| (alteration added)]. |  |

You have twice proposed deletion without explanation.

## Defendants' Proposed Deletion No. 26.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 97: "Hess continued in the July 31, 2018 <br> e-mail: 'I understand the thought process of | This is a verbatim quote from Defendants' |
| 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.' [USPS3324]." |  |

You have twice proposed deletion without explanation.

## Defendants' Proposed Deletion No. 27.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 98: "Hess concluded in the July 31, 2018 <br> e-mail: 'I cannot justify seeking a volunteer, <br> only to be told that Gerald Groff's route is <br> already covered by an RCA that was already <br> prescheduled. The two solutions would be <br> discontinue prescheduling the extra RCA or I <br> continue to seek an RCA volunteer the weeks <br> Gerald from Droff is scheduled and you have <br> Gerandants' USPS3324. <br> additional help that week. Thank you for your <br> attention to this matter. Any feedback is <br> welcome.' [USPS3324]." |  |

You have twice proposed deletion without explanation.

## Defendants' Proposed Deletion No. 28.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 99: "Gaines replied to Hess by e-mail on | This is a verbatim quote from Defendants' |
| July 31, 2018, in part, 'We only have an | USPS3324. |
| obligation to solicit for volunteers. If there are |  |
| none then he has to work. You are not required |  |
| to overschedule non volunteers to |  |
| accommodate.' [Id.]." |  |

You have twice proposed deletion without explanation.

## Defendants' Proposed Deletion No. 29.

| Third Draft Proposed Fact | Record Basis |
| :---: | :---: |
| No. 100: "As a result of Gaines' e-mail dated July 31, 2018, the process at the Lancaster County Annex of automatically scheduling an extra RCA for Groff stopped. [Hess Dep. 194:8-22]." | Hess testified as follows in relation to the July 31, 2018 e-mail: <br> Q. So you're writing this e-mail, and you're referencing the practice that Miller was doing. And you stay here, This satisfies his religious accommodation request for Sundays and no disciplinary action is needed. Do you see that? <br> A. Yes. <br> Q. So if Miller had continued that practice, it was your understanding that that was satisfying Groff's need for religious accommodation, and he would not need to be disciplined. <br> A. Correct. I think with Kelly [Miller] being a new supervisor, she wasn't aware that she was probably inadvertently-she doesn't have approval to make that kind of decision to provide a religious accommodation. She never got approval from John Brodbeck, her supervisor, I'm pretty sure, to skip over him and not schedule. <br> I think she was doing it purely on her own accord, and it stopped once I sent this e-mail and explained what the process was supposed to be for Sunday Amazon scheduling. <br> [Hess. Dep. 194:2-22]. |

You have twice proposed deletion without explanation.

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Defendants' Proposed Deletion No. 30.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 101: "Labor relations instructed Diane | Evans testified; |
| Evans to keep scheduling Groff for Sunday | Q: Did you ever receive any specific |
| deliveries. [Evans Dep. 41:20-23]. She | direction from labor relations or human |
| otherwise had no involvement in the decision | resources about how to handle the fact that |
| whether to grant Groff a religious | Mr. Groff was not coming to work on |
| accommodation. [Evans Dep. 29:14-19, 41:13- | Sundays? |
|  | A. That I was to keep scheduling him. |
|  | [Evans Dep. 41:20-23]. |
|  | 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. |
|  | [Evans Dep. 31:14-16]. |
|  |  |

You have twice proposed deletion without explanation.
Defendants' Proposed Deletion No. 31.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 105: "Hess lacked any documentation of | Hess testified, on the question of whether |
| any employee at Holtwood working on | any employees received overtime as a result |
| account of Groff. [Hess Dep. 95:9-10]. Hess, | of Groff, "I would have to check time |
| himself, is salaried and receives no overtime | keeping. I don't have that documentation." |
| pay. [Id. at 121:11-17]." | [Hess Dep. 95:9-10]. Hess also testified: |
|  | Q. As a Postmaster, are you hourly or |
|  | salaried? |
|  | A. Salaried. |
|  | [Hess Dep. 121:11-17]. |

You propose deletion without explanation.

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## Defendants' Proposed Deletion No. 32.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 108: "Groff propounded a subpoena under | We can correct the typo to say that it was a |
| Fed. R. Civ. P. 30(b)(6) and the Notice | "Notice" rather than a subpoena. But you did |
| specified, inter alia, as Item No. 3, "The | in fact receive the Notice as quoted and it |
| impact on Defendant and its operations arising | was admitted as Exhibit 1 at the corporate |
| form Plaintiff's not working on Sunday." | representative's deposition. |

You have twice proposed deletion without explanation.

## Defendants' Proposed Deletion No. 33.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 109: "USPS designated as its corporate | These are basic facts squarely established on |
| representative, and the parties deposed, | the record of the deposition at Gless Corp. |
| Deborah Ann Gless, the District Manager for | Rep. Dep. 4:6-8, 6:17-20. |
| the Central Pennsylvania District. [Gless Corp. |  |
| Rep. Dep. 4:6-8, 6:17-20]." |  |

You have twice proposed deletion without explanation.
Defendants' Proposed Deletion No. 34.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 110: "The USPS corporate representative The corporate representative testified: <br> did not have any knowledge of any actual costs Q. Is it your testimony that these things <br> to the Central Pennsylvania District on account you've just listed, cost for overtime, later <br> of Groff not working Sundays or whether delivery, cost for a distance or drive or safety <br> Groff's Sunday routes were split with other measures, that these were the actual impacts <br> RCA's. [Gless Corp. Rep. Dep. 42:1-4, 43:1- on the Postal Service from Mr. Groff not <br> 17, 45:7-9]." working on Sundays? Is that your testimony? <br>  A. I would say it would be. <br>  Q. [D]o you know if it was? <br>  A. I don't know. <br>  [Gless Corp. Rep. Dep. 41:19-25 to 42:1-4]. |  |
|  |  |

You have twice proposed deletion without explanation.

## Defendants' Proposed Deletion No. 35.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 111: "In respect of Item No. 3 in the Civil | The corporate representative testified: |
| Rule 30(b)(6) Notice, the corporate | Q. The question that was noticed for |
| representative could have gotten the actual | today's deposition was the impact on |
| information on the impact of Groff's not | defendant and its operations arising from |
| working on Sundays, but chose not to. [Gless | plaintiff's not working on Sundays. This is |
| Corp. Rep. Dep. 44:10-25]." | No. 3 [under Civil Rule 36(b)(6) Notice]. |
|  | 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 [time for RCA's], |
|  | 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. |
|  | [Ex. B, Gless Corp. Rep. Dep. 44:10-2 |
|  |  |

You have twice proposed deletion without explanation.

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## Defendants' Proposed Deletion No. 36.

| Third Draft Proposed Fact | Record Basis |
| :---: | :---: |
| No. 112: "In respect Item No. 3 in the Civil Rule 30(b)(6) Notice, the corporate representative had no actual evidence of how Groff's not working Sunday's impacted or caused any actual hardship to the Central Pennsylvania District. [Gless Corp. Rep. Dep. 53:14-25 to 54:1-9]." | The corporate representative testified: <br> Q. 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? <br> A. No. <br> Q. [D]o 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? <br> A. No. <br> [Id. at 53:14-25 to 54:1-9]. |

You have twice proposed deletion without explanation.

Defendants' Proposed Deletion No. 37.

| Third Draft Proposed Fact | Record Basis |
| :--- | :--- |
| No. 113: "The corporate representative did | The corporate representative was handed |
| review, with counsel for USPS, the Rule | Exhibit 1 (the Rule 30(b)(6) Notice) and |
| 30(b)(6) Notice prior to the Deposition. [Gless | asked, "[D]id you have a chance to review |
| Corp. Rep. at 70:7-25]." | this document with counsel in preparation of |
|  | today's deposition?" Answer: "Yes." |
|  | [Gless Corp. Rep. Dep. 70:7-25]. |

You have twice proposed deletion without explanation.

## B. Facts Established by Groff's Testimony.

In the e-mail dated February 1, 2020, defense counsel made a global assertion, "Many of the 'facts' were your client's own [thought] process/opinion/mental impressions or just legal argument." This is buttressed by numerous comments by you that something "is based entirely on Groff's testimony which I need not credit." All of these statements of yours reflect a willful

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disregard of the familiar summary judgment standard. The Court is free, at summary judgment, to consider Mr. Groff's testimony to the extent that it remains uncontradicted by the record. Matsushita Elec. Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986) (non-movant cannot avoid summary judgment through "some metaphysical doubt" of the record).

Consequently, to delete any matter based on Mr. Groff's testimony, Defendants must point to record evidence to the contrary. Otherwise, Mr. Groff's testimony is undisputed and may be considered at summary judgment.

## Defendants' Proposed Deletion Nos. 38 through 46.

Defendants proposed deleting the following from the Third Draft:

| Defendants" <br> Proposed <br> Deletion No. | Third Draft Proposed Fact |
| :---: | :--- |
| 38 | No. 7. "Groff transferred again back to the Quarryville Post Office on March <br> 8,2014 to be closer to his home. [Groff Dep. 100:1-23, 102:2-5]." |
| 39 | No. 11. "During the Christmas holiday season of 2015, Groff became <br> informed that USPS would roll-out its contractual obligations to make <br> deliveries for Amazon.com, Inc. ("Amazon') on Sundays and holidays in <br> Lancaster County. [Groff Dep. 108:25 to 109:1-21]. |
| 40 | No. 20. "After learning about the roll-out of Amazon deliveries on Sundays, <br> Groff requested a religious exemption from Sunday deliveries from <br> Quarryville Postmaster Patricia Wright. [Groff Dep. 107:3-6, 107:25 to <br> $108: 1-24,111: 8-12] . " ~$ |
| 41 | No. 21. "Wright granted the request on condition that Groff provide <br> additional shifts or auxiliary routes, whenever necessary, on other days of <br> the week, which Groff agreed to do. [Groff Dep. 107:3-6, 107:25 to 108:1- <br> $24,111: 8-12] . ~ T h i s ~ a r r a n g e m e n t ~ w o r k e d ~ w e l l ~ f o r ~ h i m . ~[G r o f f ~ D e p . ~ 331: 17-~$ |
| 22]. |  |

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| 45 | No. 25. "As a result of the transfer, Groff lost the seniority that he had <br> accrued since 2014. [Id.]" |
| :---: | :--- |
| 46 | No. 29. "In 2016, Quarryville Postmaster Patricia Wright regularly contacted <br> Groff, even though he worked at Holtwood, and requested his services to <br> cover for her RCA's who were unavailable. [Groff Dep. 150:2-25 to 152:1- <br> $10,155: 10-16] . ~ G r o f f ~ d i d ~ s o, ~ a n d ~ P o s t m a s t e r ~ H e s s ~ d i d ~ n o t ~ o b j e c t ~ t o ~ t h i s ~$ |
| arrangement and could recall Groff if necessary. [Id. at 152:11-25 to 154:1, |  |
| $155: 17-22] . "$ |  |

In each of the forgoing proposed deletions, you made substantially similar comments: "Mr. Groff asserts this but it is not a fact that can be proven and the USPS believes it will be up to the fact-finder/court to determine if this proffered reason is credible" (No. 38); "The USPS does not know whether this chronology is accurate because we don't know when he was informed" (No. 39); and "I cannot agree to any of this. This is based entirely on Groff's testimony which I need not credit" (Nos. 40-44). And you give no explanations for Nos. 45 and 46.

Your objections are not grounded on record evidence and therefore amount to improper metaphysical doubts contrary to Matsushita Elec. Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). Moreover, Mr. Groff's testimony was capable of being supported or contracted by evidence available to Defendants. That you chose not to adduce that evidence is presumptive that it would have been favorable to Groff. Otherwise, why would you withhold it?

On August 6, 2019, Plaintiff submitted Rule 26(a) Initial Disclosures to defense counsel. Page 2 of that document identified Patricia Wright as Plaintiff's Quarryville Postmaster who had discoverable information. You had the option whether to take Patricia Wright's deposition after you deposed Groff on December 20, 2019, in order to contradict Groff's testimony concerning what happened between him and Ms. Wright and while he worked at Quarryville. Patricia Wright would have also have been able to support or contradict whether she had exempted him for Amazon deliveries, and when he first requested such exemption. You did not depose Patricia Wright, presumably because you had the opportunity to privately interview her and you knew what she would say.

Moreover, Defendants' evidence corroborates Plaintiff's testimony. Brian Hess testified as follows:
Q. Did you ever offer Mr. Groff the ability to earn extra money and work extra hours in other post offices other than Holtwood?
A. Yes.
Q. Did Mr. Groff take those opportunities?
A. He would go to Quarryville willingly to get extra hours, but that was really the only office he would go to even though there were other offices who had needs and could offer him hours for work.
[Hess Dep. 205:14-25]. Moreover, Hess was in possession of Groff's statements as to why Groff made a job transfer from post office to another:
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.
[Hess Dep. 15:9-15]. That corroborates No. 44. Patricia Wright was similarly-situated: When she hired Groff at Quarryville, she could have asked why he transferred.

Hess also admitted, and you are prepared to include in the Joint-Stipulation, that seniority for RCAs was based on a particular office, not for time working for USPS as an organization. [Hess Dep. 161:22-25]. That corroborates Groff's testimony that he lost his seniority as a result of transfer to Holtwood (No. 45).

On August 6, 2019, Plaintiff submitted Rule 26(a) Initial Disclosures to defense counsel. Page 2 of that document identified Patricia Wright as Plaintiff's Quarryville Postmaster who had discoverable information.

## Defendants' Proposed Deletions Nos. 47 through 50.

Defendants proposed deleting the following from the Third Draft:

| Defendants' <br> Proposed <br> Deletion No. | Third Draft Proposed Fact |
| :---: | :--- |
| 47 | No. 14. "As an Evangelical Christian within the Protestant tradition, Gerald <br> Groff has a sincerely-held religious belief to observe Sunday as the Sabbath <br> and to refrain from secular work on that day, including his work obligations <br> to USPS. [Groff Dep. 27:8-25 to 28:1-10, 29:21-15 to 30:1-13; Plaintiff's <br> Answers to Defendant's First Set of Interrogatories, No. 4, at 7-8]." |
| 48 | No. 40. "Thus, in September, 2017, USPS informed Groff he would be <br> permitted to attend Sunday-morning church services but must report to work <br> by 12 p.m. for the remainder of the day. (the "Modified Schedule Offer"). <br> [Groff Dep. 237:6-17]." |
| 49 | No. 41. "Groff declined this offer because, in his opinion, working at all on <br> Sunday would require him to violate his sincerely held religious belief not to <br> work on Sundays at any time of day. [Groff Dep. 237:6-17]" |
| 50 | No. 59. Groff told Zehring he could not accept his proposal because "I felt <br> like he was asking me to change my religious beliefs in order to keep |

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|  | working for USPS" [Plaintiff's Answers to Defendant's First Set of <br> Interrogatories, No. 5, at 12]. As Groff testified "Sunday is the accepted day <br> of worship and rest in the Christian faith, as I know it, and has been that way <br> since the time of Christ 2,000 years ago." [Groff Dep. 211:1-3]. |
| :--- | :--- |

For No. 47, you commented, "his own belief is not a fact we can stipulate to." We asked you for citation to record evidence for disputing the same and you have not provided it. We asked you, in particular, why Defendants doubt the sincerity of Groff's religious beliefs where Lyle Gaines and Brian Hess testified that they did not. Whether Groff was offered by USPS to come to work at 12 p.m. or 1 p.m., we asked you where in the record it provides that it was 1 p.m., and you did not tell us. We also pointed out that Groff's testimony about $12 \mathrm{p} . \mathrm{m}$. was adduced by your examination of him. If you had evidence that it was 1 p.m., then that was your opportunity to question him about it.

You commented to No. 50, "All throughout if you have what was in your client's head as a 'fact," that's not an undisputed material fact." Your objections are not grounded on record evidence and therefore amount to improper metaphysical doubts contrary to Matsushita Elec. Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986).

## Defendants' Proposed Deletions Nos. 51 through 56.

Defendants proposed deleting the following from the Third Draft:

| Defendants" <br> Proposed <br> Deletion No. | Third Draft Proposed Fact |
| :---: | :--- |
| 51 | No. 55: "Wherever a PDI was held, Groff expected 'that discipline could <br> potentially happen.' [Groff Dep. 230:10-19]. Groff has never received any <br> discipline from the USPS except on account of his not working on Sundays. <br> [Groff Dep. 157:1-4, 218:23-25 to 219:1-5]. |
| 52 | No. 62: "After receiving the Letter of Warning and up until his resignation, <br> Groff regularly experienced stress because at any time Hess "could come to <br> me and say, they decided to terminate you." [Groff Dep. 311:8-25 to 312:1- <br> 9]." |
| 53 | No. 63: "Among the symptoms of the aforementioned stress, Groff gained <br> body weight, going from 215 to 240 pounds. [Groff Dep. 314:6-25 to 315:1- <br> 2]." |
| 54 | No. 70: "Groff tendered his resignation on January 18, 2019, under duress <br> and that he had been forced out of USPS, because he would be disciplined <br> by any further Sunday absences. [Groff Dep. 105:13-20, 127:10-17, 128:4-9, <br> 205:8-11] |
| 55 | No. 71: "While The 14-Day Paper Suspension between June and August, <br> 2018 listed several Sundays between June and August 2018, there were <br> additional Sundays between June and August of 2018 that Groff was |

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|  | scheduled but did not work, and thus, he "had no way of knowing how <br> many Sundays were being included before [he] got another discipline." <br> [Groff Dep. 274:8-16]." |
| :---: | :--- |
| 56 | No. 78: "Groff desired to remain an employee with USPS until retirement <br> and had, by then, invested seven years of his life with USPS. He did not quit <br> in order to pursue other callings. [Groff Dep. 114:6-11, 324:9-11]." |

You commented to No. 51, "What your client thought is not a 'fact." You gave no objetion Nos. 52 and 53 but gave a methaphorical question, "Do you really think this is an UNDISPUTED MATERIAL FACT relevant to SUMMARY JUDGMENT that the USPS is likely to agree to?" You gave no objection to Nos. 54 and 55. You commented for No. 56, "I'm trying not to get annoyed but David, this is really not a good faith effort."

Your objections are not grounded on record evidence and therefore amount to improper metaphysical doubts contrary to Matsushita Elec. Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 586-87 (1986). Moreover, as described in No. 10, supra, Defendants' witnesses corroborate that a PDI was a condition-precedent for imposing discipline. Thus, Mr. Groff's testimony is supported by Defendants' evidence.

Additionally, Defendants obtained Groff's medical records. If anything in there contradicted Mr. Groff's weight loss, then that would be a record basis to object. But if the record substantiates the weight loss, then your objection is groundless.

Very truly yours,

## CORNERSTONE LAW FIRM, LLC


cc: Client (via email)
Alan Reinach, Esquire (via email)
U.S. Department of Justice

United States Attorney

Eastern District of Pennsylvania

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December 17, 2019
VIA EMAIL AND REGULAR MAIL

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## Re: Groff v.Brennan

Civil Action No.: 19-cv-1879
Dear Counsel:
It appears we have a fundamental disagreement about the process for arriving at a joint statement of undisputed material facts. As I understand the process, the plaintiff compiles a list of facts that the plaintiff, in good faith, believes are both undisputed and material. The plaintiff then circulates the list to the defendant who reviews those facts, indicates which facts the parties do agree are both undisputed and material, and adds any additional omitted facts that the defendant, in good faith, thinks the plaintiff might agree to. The plaintiff then reviews the changes by the defendant, accepts any the plaintiff agrees to, and the parties have arrived at a joint statement of undisputed material facts. To the extent the parties do not agree on facts, each party may address those facts in the briefing (and may argue why that party believes those facts are relevant and undisputed).

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You seem to understand the process as being an adversarial one whereby the plaintiff proposes a list of fact, inferences, arguments, and misquotes/misrepresentations of the deposition testimony. The defendant must then convince the plaintiff that he is wrong. If the plaintiff remains unconvinced, all the facts he believes are undisputed and material ARE undisputed and material and the defendant must acquiesce.

I do not understand this to be what the judge intended in his policies and procedures. He calls for the parties to submit a "joint stipulation listing all of the all of the material facts on which the parties can agree" and he indicates that the parties are to "address in their briefs any other facts that could not be agreed upon". (emphasis mine).

Moreover, trying to convince each other of our respective views of this case is not a productive use of time. I have explained to you why the defendant cannot agree with many of the plaintiff's proffered "facts." As just one example, among your facts you include a statement that "Groff desired to remain an employee with USPS until retirement. . ." That is not an undisputed fact. Black's Law Dictionary defines "fact" as "[a]n actual or alleged event or circumstance, as distinguished from its legal effect, consequence, or interpretation." FACT, Black's Law Dictionary (11th ed. 2019). Your client's intention or desire is not an event or circumstance.

Nor is it undisputed. His spotty work history belies his desire to remain with the USPS long-term. His deposition testimony regarding his preference for non-secular volunteer work also belies this desire. I am entitled to impeach him at trial. His desire to stay with the USPS is simply not a "fact" that can be established for purposes of summary judgment. It is an inference from circumstantial evidence that a fact-finder can make after assessing credibility.

Additionally, your client's intention is immaterial for purposes of the summary judgment motion. An employee's intended duration of employment does not go to any of the legal elements for a religious discrimination or failure to accommodate claim. Arguably it goes to the assessment of damages, but the assessment of damages is not before the Court at the summary judgment stage.

This is but one example of many items the plaintiff included in his initial list, that the defendant removed, that the plaintiff added back to the list. Now you insist the defendant must accept these as undisputed material facts unless the defendant challenges them to your satisfaction. The plaintiff is free to cite
anything he feels is a material fact in his motion, the defense will respond in its opposition. The Court will then decide.

I have attached a list of facts that I believe we have agreed upon. I circulated this list on Saturday. The defendant will agree upon these facts. The defendant cannot agree to any others. If we are in agreement, let me know and I will sign the signature block. I believe the defendant has followed the process outlined by the judge and I am hopeful that this puts the confusion to an end. It doesn't strike me as a good use of either of our time.

Sincerely,
WILLIAM M. McSWAIN
United States Attorney
/s Veronica J. Finkelstein
VERONICA J. FINKELSTEIN
Assistant United States Attorney
cc: Lauren DeBruicker, AUSA (via email)
Emily Wood (via email)

## JUDGE JEFFREY L. SCHMEHL

Judge Schmehl was appointed to the United States District Court for the Eastern District of Pennsylvania on June 27, 2013.

## I. PRELIMINARY GENERAL MATTERS

## A. Correspondence with the Court

Law clerks have no authority to grant continuances or to give advice on substantive or procedural matters. Therefore, unless contacted by a law clerk, counsel should not communicate with the law clerk. Telephone inquiries regarding civil cases should be directed to Barbara A. Crossley, my Civil Deputy Clerk, at 610-320-5099. Telephone inquiries regarding criminal cases should be directed to Teri L. Lefkowith, my Criminal Deputy Clerk, at 610-320-5030. Email is preferred for most written correspondence with chambers, and the address is Chambers_of_Judge_Jeffrey_L_Schmehl@paed.uscourts.gov.

## B. Telephone Conferences

Judge Schmehl will hold telephone conferences to resolve scheduling matters, discovery disputes, and substantive motions. The court will also hold telephone conferences at any time to explore the possibility of settlements. The court will notify counsel of the date and time for the telephone conference. In a civil case, counsel for the moving party will be responsible for initiating the telephone conference and contacting Judge Schmehl through his Secretary/Deputy Clerk after all parties are present on the call. In a criminal case, the United States Attorney's Office will be responsible for initiating the call and contacting Judge Schmehl through his Criminal Deputy Clerk after all parties are present on the call.

## C. Oral Arguments and Evidentiary Hearings

Judge Schmehl does not set aside certain days or times for oral argument, motions, or evidentiary hearings. Hearings and argument are scheduled when warranted.

## D. Pro Hac Vice Admissions

Counsel moving for the pro hac vice admission of an attorney must file a motion setting forth the attorney's admission, the reason why the party desires the attorney to participate, and why the attorney is especially qualified to do so. The form application provided by the Clerk is inadequate. Moving counsel shall also indicate that the filing fee has been paid.

## E. Faxes

Unless specifically requested or explicitly permitted by the court, parties should not transmit pleadings, motions, or other filings by fax to chambers.

## F. Courtesy Copies

Courtesy copies shall not be provided to chambers unless the exhibits are voluminous or chambers require them.

## II. CIVIL CASES

## A. Pretrial Procedure

## 1. Rule 16 Conference

The court will schedule a preliminary pretrial conference as described in Federal Rule of Civil Procedure 16(b) and (c) shortly after a defendant has filed an appearance or pleading. Counsel are expected to commence discovery immediately upon the joining of the case in order to have a substantive amount of discovery completed by the time they appear for the Rule 16
conference. At least three business days prior to the pretrial conference, counsel must complete and submit to my Reading chambers, by email, the joint status report of the Rule 26(f) meeting. A blank form for this report is available on the website with these Policies \& Procedures.

The court relies on counsel's good faith compliance with Rule $26(f)$ in all respects. The Rule 26(f) meeting should take place as early in the case as possible, but no later than twenty-one days before the scheduled Rule 16 conference. Outstanding motions will not excuse the requirements of holding the meeting and submitting the plan. The meeting should be a meaningful and substantive discussion to formulate the proposed discovery plan required by the Rule. Parties who do not comply will have no voice at the scheduling conference and may be subject to additional sanctions. Initial disclosures pursuant to Rule 26(a) shall be completed no later than seven days before the Rule 16 conference.

It is also expected that the parties will reach an agreement on how to conduct electronic discovery. The parties shall discuss the parameters of their anticipated e-discovery at the Rule $26(\mathrm{f})$ conference and shall be prepared to address e-discovery at the Rule 16 conference with the court. In the event the parties cannot reach such an agreement before the Rule 16 conference, the court will enter an Order incorporating default standards, a sample of which is found on the website below my policies and procedures.

At the initial pretrial conference, the parties should be prepared to address all topics listed in Local Rule of Civil Procedure 16.1(b) and Federal Rule of Civil Procedure 16(b) and (c), the progress of self-executing disclosure under Federal Rule of Civil Procedure 26(a), and any settlement or mediation proposals. The court will issue a Rule 16 scheduling order at the conclusion of the conference.

Lead trial counsel must attend the Rule 16 conference. Counsel taking part in any pretrial conference must be prepared to speak on every subject, including settlement, and have authority from their clients to do so. Counsel shall be prepared to discuss all claims and defenses in detail, and shall have a thorough comprehension of the facts.

## 2. Final Pretrial Conference

There will be a final pretrial conference within ten days of the trial date. Counsel shall comply with Local Rule 16.1 regarding the submission of a pretrial memorandum. These memoranda shall be filed no later than seven days prior to the pretrial conference.

During this conference, the court will address factual and legal issues, the admissibility of exhibits, scheduling issues, and settlement.

## B. Continuances and Extensions

Unless there is good cause to justify a change, the parties are expected to adhere to the dates contained in scheduling orders. Continuance requests must be put in writing, and email is sufficient. The court will grant a continuance or extension based on a stipulation of all parties if the continuance or extension does not affect the discovery cutoff or trial date. If a continuance or extension will affect the discovery cutoff or trial date, counsel should make a written request which sets forth the basis for the continuance or extension and indicates whether the other party or parties agree to or oppose the request. A request for an extension or continuance of the trial date, discovery deadline, or the deadline for filing dispositive motions must be made sufficiently prior to the due date to allow time for the court to consider it. These requests should be made by motion, although an unopposed request may be made by letter to the court.

## C. General Motion Practice

## 1. Oral Argument on Motions

If the judge believes oral argument will be helpful in deciding a matter, he will schedule it, particularly when it involves a dispositive motion. A party desiring oral argument should request it by letter or in the body of the motion or responsive pleading.

## 2. Reply and Surreply Briefs

Reply briefs, addressing only issues raised in the brief in opposition and not repeating arguments in the brief, may be filed within seven days of service of the opponent's brief in opposition and shall be limited to ten pages. No further briefs may be filed.

## 3. Length and content of briefs or legal memoranda

All grounds for relief should be set forth in a single, comprehensive motion. A motion to dismiss, for example, should not be divided into separate motions for each count, but rather should include all bases for relief. Any brief or memorandum should be limited to twenty-five pages. If a party requires more than twenty-five pages to explain its position to the court, a motion to exceed the page limit should be filed, setting forth good cause for granting an exception.

## 4. Rule 56 Motions

Along with any motion for summary judgment, the parties must file a joint stipulation listing all of the material facts on which the parties can agree. Judge Schmehl expects parties opposing summary judgment motions to cooperate in preparing such stipulations. The parties should then address in their briefs any other facts that could not be agreed upon because they are in dispute as to either correctness or materiality, or because one party simply asserts they should not be in dispute, but extensive factual disputes may lead to denial of summary judgment motions.

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

GERALD E. GROFF, Plaintiff, :
-
v.

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

Defendant,

## No. 19-CV-1879

:

## :

$\qquad$

## 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 JointStipulation 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 318-2425 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 If 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." $[\mathrm{Pl}$. 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., $\qquad$ U.S. $\qquad$ 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. 373]. 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.
61. 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.
62. 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.
63. 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 promised 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. II 8]. Agree to the balance.
64. 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. If 8]. Therefore, Moyer was not injured for the entirety of the 2017 peak season.
65. Disagree. Groff "assumed" he would be disciplined if he was scheduled on Sunday and didn't work. [Def. Ex. B at 205:8-11].
66. 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.
67. 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.
68. 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].
69. 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.
70. 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.
71. Reference should be made to No. 26 from the Joint-Stipulation of Undisputed Facts, ECF No. 37-3.
72. 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.
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.
77. 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.].
78. 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].
79. Agree.
80. 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.
81. Agree in part and disagree in materiality in part. That there was no discussion on religion is not material.
82. 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.
83. Agree in part and disagree on materiality in part. That there was no discussion on religion is not material.
84. 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.
85. 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.
86. Agree.
87. 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 231:1119]. 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].
88. 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.
Respectfully submitted,

## CHURCH STATE COUNCIL

Dated: March 6, 2020
By: /s/ Alan J. Reinach
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# United States District Court <br> Eastern District of Pennsylvania (Allentown) CIVIL DOCKET FOR CASE \#: 5:19-cv-01879-JLS 

GROFF v. DEJOY
Assigned to: HONORABLE JEFFREY L. SCHMEHL
Referred to: MAGISTRATE JUDGE HENRY S. PERKIN (Settlement)
Case in other court: U.S.C.A., 21-01900
Cause: 42:2000e Job Discrimination (Employment)

Date Filed: 05/01/2019
Date Terminated: 04/06/2021
Jury Demand: Plaintiff
Nature of Suit: 442 Civil Rights:
Employment
Jurisdiction: Federal Question

## Plaintiff

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V.

## Defendant

MEGAN J. BRENNAN
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STATES POSTAL SERVICE
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## Defendant

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represented by VERONICA JANE FINKELSTEIN
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LEAD ATTORNEY
ATTORNEY TO BE NOTICED
LAUREN E. DEBRUICKER
(See above for address)
ATTORNEY TO BE NOTICED

| Date Filed | $\#$ | Docket Text |
| :--- | :---: | :--- |
| $05 / 01 / 2019$ | $\underline{1}$ | COMPLAINT against MEGAN J. BRENNAN ( Filing fee $\$ 400$ receipt number <br> APE005096), filed by GERALD E. GROFF. (er, ) (Entered: 05/01/2019) |
| $05 / 01 / 2019$ |  | DEMAND for Trial by Jury by GERALD E. GROFF. (er, ) (Entered: 05/01/2019) |
| $05 / 01 / 2019$ |  | Summons Issued as to MEGAN J. BRENNAN and U.S. Attorney General 2 Originals <br> Forwarded To: Counsel on 5/1/19. 1 Original to U.S. Attorney. (er, ) (Entered: 05/01/2019) |
| $05 / 02 / 2019$ | $\underline{\underline{2}}$ | NOTICE of Appearance by JEREMY L. SAMEK on behalf of GERALD E. GROFF with <br> Certificate of Service(SAMEK, JEREMY) (Entered: 05/02/2019) |
| $05 / 02 / 2019$ $\underline{3}$ NOTICE of Appearance by RANDALLL LUKE WENGER on behalf of GERALD E. <br> https://ecf.paed.uscourts.gov/cgi-bin/DktRpt.pl?24000195668442-L_1_0-1 |  |  |


| 5/21/2021 | United States District Court Eastern District of Pennsylvania |  |
| :---: | :---: | :---: |
|  |  | GROFF with Certificate of Service(WENGER, RANDALL) (Entered: 05/02/2019) |
| 05/15/2019 | 4 | Acceptance of Service by U.S. Attorney Re: accepted summons and complaint on behalf of the United States Attorney (only). (sg, ) (Entered: 05/16/2019) |
| 05/23/2019 | 5 | APPLICATION for Admission Pro Hac Vice of Alan J. Reinach by GERALD E. GROFF. ( Filing fee \$ 40 receipt number 0313-13561112.). (CROSSETT, DAVID) (Entered: 05/23/2019) |
| 05/23/2019 | $\underline{6}$ | ORDER OF 5/23/2019 THAT THE APPLICATION OF ALAN J. REINACH, ESQUIRE, TO PRACTICE IN THIS COURT PURSUANT TO LRCP 83.5.2(b) IS GRANTED. SIGNED BY JUDGE: JEFFREY L. SCHMEHL ON 5/23/2019. 5/23/19 ENTERED AND COPIES E-MAILED AND MAILED AND MAILED TO UNREPRESENTED PARTY. (ECF FORM SENT TO ALANJ. REINACH, ESQUIRE. (DT) Modified on 5/23/2019 (dt, ). (Entered: 05/23/2019) |
| 05/30/2019 | 7 | AMENDED COMPLAINT against MEGAN J. BRENNAN, filed by GERALD E. GROFF.(sg, ) (Entered: 05/30/2019) |
| 05/30/2019 |  | 2 Summons Issued as to MEGAN J. BRENNAN, U.S. Attorney and U.S. Attorney General Forwarded To: TO PLAINTIFFS COUNSEL on 5/30/2019 (sg, ) (Entered: 05/30/2019) |
| 07/15/2019 | $\underline{8}$ | ANSWER to 7 Amended Complaint with Affirmative Defenses by MEGAN J. BRENNAN. (Attachments: \# 1 Certificate of Service Certificate of Service) (FINKELSTEIN, VERONICA) Modified on 7/16/2019 (lisad, ). (Entered: 07/15/2019) |
| 07/17/2019 | $\underline{9}$ | ORDER OF 7/17/2019 THAT THE ABOVE CAPTIONED MATTER IS REFERRED TO U.S. MAGISTRATE JUDGE: HENRY S. PERKIN FOR THE PURPOSE OF SCHEDULING AND CONDUCTING A SETTLEMENT CONFERENCE. SIGNED BY JUDGE: JEFFREY L. SCHMEHL ON 7/17/2019. 7/17/2019 ENTERED AND COPIES E-MAILED AND MAILED. (DT) Modified on 7/17/2019 (dt, ). (Entered: 07/17/2019) |
| 07/17/2019 | 10 | ORDER OF 7/17/2019 THAT A PRETRIAL CONFERENCE (RULE 16) SHALL BE HELD ON THURSDAY, AUGUST 22, 2019 AT 2:30PM IN CHAMBERS. ETC. SIGNED BY JUDGE: JEFFREY L. SCHMEHL ON 7/17/2019. 7/17/2019 ENTERED AND COPIES E-MAILED AND MAILED. (DT) (Entered: 07/17/2019) |
| 07/29/2019 | 11 | ORDER OF 7/29/2019 THAT A TELEPHONIC SETTLEMENT/STATUS CONFERENCE WILL BE HELD ON AUGUST 13, 2019 AT 3:30PM BEFORE THE HONORABLE HENRY S. PERKIN U.S. MAGISTRATE JUDGE. DAVID W. CROSSETT, ESQUIRE SHALL INITIATE THE CALL. ETC. SIGNED BY MAGISTRATE JUDGE HENRY S. PERKIN ON 7/29/19. 7/29/19 ENTERED AND COPIES E-MAILED.(DT) (Entered: 07/29/2019) |
| 07/29/2019 | $\underline{12}$ | ORDER OF 7/29/2019 THAT AN IN PERSON SETTLEMENT CONFERENCE WILL BE HELD ON DECEMBER 19, 2019 AT 9:30AM BEFORE MAGISTRATE JUDGE: HENRY S. PERKIN. ETC. SIGNED BY MAGISTRATE JUDGE: HENRY S. PERKIN ON 7/29/2019. 7/29/19 ENTERED AND COPIES MAILED AND E-MAILED.(DT) (Entered: 07/29/2019) |
| 08/07/2019 | 13 | MOTION for Protective Order Privacy Act Stipulation filed by MEGAN J. BRENNAN.Order. (Attachments: \# $\underline{1}$ Text of Proposed Order Stipulated Order, \# $\underline{2}$ Certification, \# $\underline{3}$ Certificate of Service Certificate of Service)(FINKELSTEIN, VERONICA) Modified on 8/28/2019 (nd, ). (Entered: 08/07/2019) |
| 08/08/2019 | 14 | AMENDED ORDER THAT A TELEPHONIC SETTLEMENT/STATUS CONFERENCE SET FOR 9/4/2019 02:30 PM BEFORE HONORABLE JEFFREY L. SCHMEHL; ETC. |


| 5/21/2021 | United States District Court Eastern District of Pennsylvania |  |
| :---: | :---: | :---: |
|  |  | AS HEREIN. SIGNED BY MAGISTRATE JUDGE HENRY S. PERKIN ON 8/8/19. 8/8/19 ENTERED AND COPIES E-MAILED.(mas, ) (Entered: 08/08/2019) |
| 08/08/2019 | 15 | PRIVACY ACT STIPULATION AND ORDER OF CONFIDENTIALITY THAT BY AND BETWEEN PLAINTIFF GERALD E. GROFF, AND DEFENDANT MEGAN BRENNAN, POSTMASTER GENERAL, UNITED STATES POSTAL SERVICE (COLLECTIVELY, THE "PARTIES"), THAT THE PARTIES WILL BE BOUND BY THE TERMS AND CONDITIONS OF THIS PRIVACY ACT STIPULATION AND ORDER OF CONFIDENTIALITY ("ORDER"), COVERING DISCLOSURE AND HANDLING OF DOCUMENTS PRODUCED AND DISCLOSED BY THE DEFENDANT AND THE UNITED STATES POSTAL SERVICE ('USPS'), AS SET FORTH BELOW; ETC. AS HEREIN. SIGNED BY HONORABLE JEFFREY L. SCHMEHL ON 8/8/19. 8/8/19 ENTERED AND COPIES E-MAILED.(mas, ) Modified on 8/9/2019 (lisad, ). (Entered: 08/08/2019) |
| 08/21/2019 | $\underline{16}$ | ORDER OF 8/21/2019 THAT THE RULE 16 CONFERENCE SCHEDULED FOR THURSDAY, AUGUST 22, 2019 AT 2:30PM WILL BE HELD TELEPHONICALLY RATHER THAN IN PERSON. COUNSEL FOR THE PLAINTIFF SHALL INITIATE THE CALL.. SIGNED BY HONORABLE JEFFREY L. SCHMEHL ON 8/21/19. 8/21/19 ENTERED AND COPIES E-MAILED.(DT) (Entered: 08/21/2019) |
| 08/22/2019 | 17 | ORDER OF 8/22/2019 THAT AFTER A RULE 16 CONFERENCE WITH COUNSEL, IT IS HEREBY ORDERED THAT FACT DISCOVERY SHALL BE COMPLETED BY JANUARY 17, 2020. ALL DISPOSITIVE MOTIONS SHALL BE COMPLETED BY FEBRUARY 14, 2020. A STATUS/SETTLEMENT CONFERENCE SHALL BE HELD ON DECEMBER 13, 2019 AT 10:00AM IN CHAMBERS. SIGNED BY JUDGE: JEFFREY L. SCHMEHL ON 8/22/2019. 8/22/2019 ENTERED AND COPIES EMAILED. (DT) (Entered: 08/22/2019) |
| 08/26/2019 | $\underline{18}$ | Minute Entry for proceedings held before HONORABLE JEFFREY L. SCHMEHL. A Rule 16 Scheduling Conference was held on 8/22/19 and not placed on the record. (DT) (Entered: 08/26/2019) |
| 09/05/2019 | $\underline{19}$ | Minute Entry for proceedings held before MAGISTRATE JUDGE HENRY S. PERKIN. Interim Pretrial Conference held on $9 / 4 / 19$. A telephonic pretrial conference was conduted in this case. (mas, ) (Entered: 09/05/2019) |
| 10/24/2019 | $\underline{20}$ | ORDER THAT A TELEPHONE CONFERENCE IS SCHEDULED FOR FRIDAY, OCTOBER 25, 2019 AT 11:30 A.M. COUNSEL FOR THE PLAINTIFF SHALL INITIATE THE TELEPHONE CONFERENCE CALL AND WHEN ALL COUNSEL ARE ON THE LINE, CALL CHAMBERS AT 610-320-5099. SIGNED BY HONORABLE JEFFREY L. SCHMEHL ON 10/24/19. 10/24/19 ENTERED AND COPIES E-MAILED.(mas, ) (Entered: 10/24/2019) |
| 10/28/2019 | $\underline{21}$ | ORDER OF 10/25/2019 THAT AFTER A TELEPHONE STATUS CONFERENCE WITH COUNSEL FOR BOTH PARTIES, IT IS HEREBY ORDERED THA A TELEPHONE STATUS CONFERENCE SHALL BE HELD ON THURSDAY, NOVEMBER 14, 2019 AT 11:00AM. PLAINITFF'S COUNSEL SHALL INITIATE THE CALL. SIGNED BY JUDGE: JEFFREY L. SCHMEHL ON 10/25/2019. 10/25/19 ENTERED AND COPIES E-MAILED.(DT) (Entered: 10/28/2019) |
| 10/28/2019 | $\underline{22}$ | Minute Entry for proceedings held before HONORABLE JEFFREY L. SCHMEHL. A Telephone Conference held on 10/25/19and not placed on the record. (DT) (Entered: 10/28/2019) |
| 11/04/2019 | $\underline{23}$ | NOTICE of Appearance by LAUREN E. DEBRUICKER on behalf of MEGAN J. BRENNAN with Certificate of Service(DEBRUICKER, LAUREN) (Entered: 11/04/2019) |


| 5/21/2021 |  | United States District Court Eastern District of Pennsylvania |
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| 11/13/2019 | $\underline{24}$ | MOTION to Compel Plaintiff's Signed Authorizations filed by MEGAN J. BRENNAN.Memorandum, Certificate of Service. (Attachments: \# 1 Memorandum Memorandum of Law, \# $\underline{2}$ Text of Proposed Order Order, \# $\underline{3}$ Exhibit Exhibit A part 1, \# $\underline{4}$ Exhibit Exhibit A part 2, \# 5 Exhibit Exhibit B, \# 6 Exhibit Exhibit C part 1, \# 7 Exhibit Exhibit C part 2, \# 8 Exhibit Exhibit C part 3, \# 9 Exhibit Exhibit D, \# 10 Exhibit Exhibit E, \# 11 Exhibit Exhibit F, \# 12 Exhibit Exhibit G, \# 13 Exhibit Exhibit H, \# 14 Exhibit Exhibit I, \# 15 Supplement Certificate of Compliance, \# 16 Certificate of Service Certificate of Service)(FINKELSTEIN, VERONICA) (Entered: 11/13/2019) |
| 11/13/2019 | $\underline{25}$ | Minute Entry for proceedings held before MAGISTRATE JUDGE HENRY S. PERKIN. A Telephonic Settlement Conference was held on 11/13/2019. (DT) (Entered: 11/14/2019) |
| 11/14/2019 | $\underline{26}$ | ORDER OF 11/14/2019 THAT AFTER A TELEPHONE STATUS CONFERENCE WITH COUNSEL, IT IS HEREBY ORDERED THAT THE STATUS/SETTLEMENT CONFERENCE PREVIOUSLY SCHEDULED FOR FRIDAY, DECEMBER 13, 2019 AT 10:00AM SHALL NOW BE HELD ON FRIDAY, JANUARY 3, 2020 AT 2:00PM IN THE READING CHAMBERS. SIGNED BY JUDGE: JEFFREY L. SCHMEHL ON 11/14/2019. 11/14/2019 ENTERED AND COPIES E-MAILED.(DT) (Entered: 11/14/2019) |
| 11/15/2019 | $\underline{27}$ | Minute Entry for proceedings held before HONORABLE JEFFREY L. SCHMEHL Telephone Conference held on 11/14/19 (dt, ) (Entered: 11/15/2019) |
| 11/22/2019 | $\underline{28}$ | ORDER OF 11/22/2019 THAT THE STATUS/SETTLEMENT CONFERENCE PREVIOUSLY SCHEDULED FOR JANUARY 3, 2020 SHALL NOW BE HELD ON JANUARY 16, 2020 AT 11:00AM IN THE READING CHAMBERS. ETC. SIGNED BY JUDGE: JEFFREY L. SCHMEHL ON 11/22/19. 11/22/19 ENTERED AND COPIES EMAILED.(DT) (Entered: 11/22/2019) |
| 11/25/2019 | $\underline{29}$ | ORDER OF 11/25/2019 THAT UPON RECEIPT OF CORRESPONDENCE FROM DEFENDANT'S COUNSEL WITHDRAWING DEFENDANT'S "MOTION TO COMPEL PLAINTIFF'S SIGNED AUTHORIZATIONS" (ECF NO. 24) IT IS HEREBY ORDERED THAT THIS MOTION IS DENIED AS MOOT. SIGNED BY JUDGE: JEFFREY L. SCHMEHL ON 11/25/2019. 11/25/2019 ENTERED AND COPIES EMAILED. (DT) (Entered: 11/25/2019) |
| 12/05/2019 | 30 | ORDER OF 12/5/2019 THAT THE STATUS/SETTLEMENT CONFERENCE PREVIOUSLY SCHEDULED FOR JANUARY 16, 2020 SHALL NOW BE HELD ON THURSDAY, FEBRUARY 6, 2020 AT 2:00PM IN THE READING, PA CHAMBERS. ETC. SIGNED BY JUDGE: JEFFREY L. SCHMEHL ON 12/5/2019. 12/5/2019 ENTERED AND COPIES E-MAILED.(DT) (Entered: 12/05/2019) |
| 12/19/2019 | 31 | Minute Entry for proceedings held before MAGISTRATE JUDGE HENRY S. PERKIN. An in person Settlement Conference was held on 12/19/19. (DT) (Entered: 12/19/2019) |
| 12/23/2019 | $\underline{32}$ | ORDER THAT A TELEPHONIC SETTLEMENT/STATUS CONFERENCE (WITH DEFENSE COUNSEL, ONLY) IN THE ABOVE-CAPTIONED CASE WILL BE HELD ON TUESDAY, JANUARY 21, 2020 AT 3:30 PM BEFORE THE HONORABLE HENRY S. PERKIN, UNITED STATES MAGISTRATE JUDGE, ETC. SIGNED BY MAGISTRATE JUDGE HENRY S. PERKIN ON 12/20/19. 12/23/19 ENTERED AND COPIES E-MAILED.(er, ) (Entered: 12/23/2019) |
| 01/14/2020 | $\underline{33}$ | ORDER THAT THE STATUS/SETTLEMENT CONFERENCE PREVIOUSLY SCHEDULED FOR FEBRUARY 6, 2020 IS RESCHEDULED TO FRIDAY, FEBRUARY 21, 2020 AT 11:00 A.M. IN THE READING CHAMBERS OF JUDGE JEFFREY L. SCHMEHL, THE GATEWAY BUILDING, 201 PENN STREET, 5TH FLOOR, READING, PENNSYLVANIA. (NOTE: THIS IS NEW LOCATION).. SIGNED |


| 5/21/2021 | United States District Court Eastern District of Pennsylvania |  |
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|  |  | BY HONORABLE JEFFREY L. SCHMEHL ON 01/14/2020. 01/14/2020 ENTERED AND COPIES E-MAILED.(nd, ) (Entered: 01/14/2020) |
| 01/23/2020 | 34 | Minute Entry for proceedings held before MAGISTRATE JUDGE HENRY S. PERKIN. A Telephonic Settlement Conference was held on 1/21/20. (DT) (Entered: 01/23/2020) |
| 01/23/2020 | 35 | Minute Entry for proceedings held before MAGISTRATE JUDGE HENRY S. PERKIN. A Telephonic Pretrial Conference was held on 1/22/20. (DT) (Entered: 01/23/2020) |
| 02/14/2020 | $\underline{36}$ | MOTION for Summary Judgment filed by MEGAN J. BRENNAN.Memorandum, Certificate of Service. (Attachments: \# 1 Statement of Facts and Exhibits A-C, \# 2 Exhibits D-K)(DEBRUICKER, LAUREN) (Entered: 02/14/2020) |
| 02/14/2020 | 37 | MOTION for Partial Summary Judgment filed by GERALD E. GROFF.Brief. (Attachments: \# 1 Brief Brief In Support, \# $\underline{2}$ Text of Proposed Order Proposed Order, \# $\underline{3}$ Supplement Joint Fact Statement, \# 4 Appendix Appendix)(READY, JOEL) (Entered: 02/14/2020) |
| 02/18/2020 | $\underline{38}$ | MOTION for Sanctions filed by GERALD E. GROFF.. (Attachments: \# 1 Brief, \# $\underline{2}$ Exhibit, \# $\underline{3}$ Text of Proposed Order)(CROSSETT, DAVID) (Entered: 02/18/2020) |
| 02/25/2020 | $\underline{39}$ | ORDER OF 2/24/20 THAT AFTER A STATUS/SETTLEMENT CONFERENCE WITH ALLCOUNSEL, IT IS HEREBY ORDERED THAT ORAL ARGUMENT ON ALL PENDING MOTIONS SHALL BE HELD ON MARCH 24, 2020 AT 11:00AM. ETC. SIGNED BY JUDGE: JEFFREY L. SCHMEHL ON 2/24/20. 2/25/20 ENTERED AND COPIES E-MAILED.(DT) (Entered: 02/25/2020) |
| 02/25/2020 | 40 | Minute Entry for proceedings held before HONORABLE JEFFREY L. SCHMEHL. A Status/Settlement Conference was held on 2/21/20 and not placed on the record. (DT) (Entered: 02/25/2020) |
| 02/28/2020 | 41 | ORDER OF 2/28/20 THAT UPON REVIEW OF PARTIES' JOINT MOTION, IT IS HEREBY ORDERED THAT THE DEADLINE TO FILE BRIEFS IN OPPOSITION TO THE PENDING MOTIONS FOR SUMMARY JUDGMENT (DOC NOS. 36-37) IS EXTENDED TO FRIDAY, MARCH 6,2020. SIGNED BY JUDGE: JEFFREY L. SCHMEHL ON 2/28/20. 2/28/20 ENTERED AND COPIES E-MAILED.(DT) (Entered: 02/28/2020) |
| 03/03/2020 |  | Set/Reset Deadlines as to 37 MOTION for Partial Summary Judgment , $\underline{36}$ MOTION for Summary Judgment . RESPONSES DUE BY 3/6/2020. (dt, ) (Entered: 03/03/2020) |
| 03/06/2020 | 42 | MEMORANDUM of Law in Opposition re 37 MOTION for Partial Summary Judgment filed by MEGAN J. BRENNAN. Certificate of Service. (FINKELSTEIN, VERONICA) Modified on 3/9/2020 (lisad, ). (Entered: 03/06/2020) |
| 03/06/2020 | 43 | BRIEF in Opposition re 36 MOTION for Summary Judgment filed by GERALD E. GROFF. (Attachments: \# 1 Supplement Pl's Response to Def's Statement of Facts, \# 2 Exhibit Exhibits to Pl's Brief in Opposition to Def MSJ)(CROSSETT, DAVID) Modified on 3/9/2020 (lisad, ). (Entered: 03/06/2020) |
| 03/06/2020 | 44 | Proposed Pretrial Order Proposed Order re Def Motion For Summary Judgment by GERALD E. GROFF. (CROSSETT, DAVID) *FORWARDED TO JUDGE* Modified on 3/9/2020 (lisad, ). (Entered: 03/06/2020) |
| 03/06/2020 | 45 | RESPONSE in Opposition re 38 MOTION for Sanctions filed by MEGAN J. BRENNAN. (DEBRUICKER, LAUREN) (Entered: 03/06/2020) |
| 03/13/2020 | 46 | REPLY in Support re 66 MOTION for Summary Judgment filed by MEGAN J. BRENNAN. Certificate of Service. (Attachments: \# 1 Exhibit Exhibit A)(FINKELSTEIN, |


| 5/21/2021 |  | United States District Court Eastern District of Pennsylvania |
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|  |  | VERONICA) Modified on 3/16/2020 (lisad, ). (Entered: 03/13/2020) |
| 03/13/2020 | $\underline{47}$ | REPLY to Response to Motion re 36 MOTION for Summary Judgment filed by GERALD E. GROFF. (Attachments: \# 1 Exhibit)(CROSSETT, DAVID) (Entered: 03/13/2020) |
| 03/13/2020 | $\underline{48}$ | REPLY to Response to Motion re 38 MOTION for Sanctions filed by GERALD E. GROFF. (Attachments: \# 1 Exhibit)(CROSSETT, DAVID) Modified on 3/16/2020 (lisad, ). (Entered: 03/13/2020) |
| 03/20/2020 | $\underline{49}$ | ORDER THAT THE ORAL ARGUMENT ON ALL PENDING MOTIONS PREVIOUSLY SCHEDULED FOR MARCH 24, 2020 SHALL BE HELD ON FRIDAY, MAY 1, 2020 AT 10:30 A.M. IN THE READING COURTROOM OF JUDGE JEFFREY L. SCHMEHL, THE GATEWAY BUILDING, 201 PENN STREET, FLOOR 5, READING, PENNSYLVANIA. SIGNED BY HONORABLE JEFFREY L. SCHMEHL ON 3/19/20. 3/20/20 ENTERED AND COPIES E-MAILED.(mas, ) (Entered: 03/20/2020) |
| 04/14/2020 | $\underline{50}$ | ORDER OF 4/14/20 THAT ORAL ARGUMENT ON ALL PENDING MOTIONS PREVIOUSLY SCHEDULED FOR MAY 1, 2020 SHALL BE HELD ON JUNE 1,2020 AT 10:00AM IN THE READING COURTROOM. SIGNED BY JUDGE: JEFFREY L. SCHMEHL ON 4/14/20. 4/14/20 ENTERED AND COPIES E-MAILED.(DT) (Entered: 04/14/2020) |
| 06/02/2020 | $\underline{51}$ | Minute Entry for proceedings held before HONORABLE JEFFREY L. SCHMEHL. Motion Hearing held on $6 / 1 / 20$ for all Pending motions held by videoconference and placed on the record. (DT) (Entered: 06/02/2020) |
| 06/19/2020 | $\underline{52}$ | Joint Stipulation to Substitute Party and Amend Caption filed by MEGAN J. BRENNAN.. (Attachments: \# 1 Text of Proposed Order order)(FINKELSTEIN, VERONICA) *FILED IN ERROR BY ATTORNEY; FORWARDED TO JUDGE FOR APPROVAL* Modified on 6/22/2020 (lisad, ). (Entered: 06/19/2020) |
| 06/22/2020 | $\underline{53}$ | ORDER OF $6 / 22 / 20$ THAT LOUIS DEJOY, POSTMASTER GENERAL, UNITED STATES POSTAL SERVICEIS HEREBY SUBSTITUTED FOR THE CURRENT NAMED DEFENDANT MEGAN J. BRENNAN, POSTMASTER GENERAL, UNITED STATES POSTAL SERVICE. ETC. SIGNED BY JUDGE: JEFFREY L. SCHMEHL ON 6/22/20. 6/22/20 ENTERED AND COPIES E-MAILED. (DT) (Entered: 06/22/2020) |
| 04/06/2021 | 54 | MEMORANDUM AND/OR OPINION.. SIGNED BY JUDGE: JEFFREY L. SCHMEHL ON 4/6/21. 4/6/21 ENTERED AND COPIES E-MAILED.(DT) (Entered: 04/06/2021) |
| 04/06/2021 | $\underline{55}$ | ORDER OF 4/6/21 THAT UPON REVIEW OF ALL PENDING MOTIONS IN THIS MATTER, AS WELL AS ALL RESPONSES AND REPLIES, AND AFTER ORAL ARGUMENT BEING HELD, IT IS HEREBY ORDERED AS FOLLOWS: DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AS TO COUNTS I AND II OF THE AMENDED COMPLAINT (DOC. NO. 36) IS GRANTED; PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AS TO COUNT II OF THE AMENDED COMPLAINT (DOC. 37) IS DENIED; PLAINTIFF'S MOTION FOR SANCTIONS (DOC. 38) IS DENIED; JUDGMENT SHALL BE ENTERED IN FAVOR OF DEFENDANT; AND THE CLERK OF COURT SHALL CLOSE THIS CASE. SIGNED BY JUDGE: JEFFREY L. SCHMEHL ON 4/6/21. 4/6/21 ENTERED AND COPIES E-MAILED. (DT) (Entered: 04/06/2021) |
| 05/05/2021 | $\underline{56}$ | NOTICE OF APPEAL as to 55 Order (Memorandum and/or Opinion),, by GERALD E. GROFF. Filing fee $\$ 505$, receipt number 0313-15099488. Copies to Judge, Clerk USCA, Appeals Clerk and (WENGER, RANDALL) (Entered: 05/05/2021) |
| 05/06/2021 | $\underline{57}$ | NOTICE of Docketing Record on Appeal from USCA re 56 Notice of Appeal (Credit Card Payment) filed by GERALD E. GROFF. USCA Case Number 21-1900 (sg, ) (Entered: |

United States District Court Eastern District of Pennsylvania


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| Billable <br> Pages: | 6 | Cost: |

## CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2021, I caused the foregoing to be electronically filed with the Clerk of Court using the CM/ECF System, which will send notice of such filing to all registered users.

Dated: July 28, 2021
/s/ Christopher E. Tutunjian
Christopher E. Tutunjian


[^0]:    ${ }^{1}$ Groff argues that the McDonnell-Douglas burden shifting framework is no longer applicable to disparate treatment cases after the U.S Supreme Court's decision in EEOC v. Abercrombie \& Fitch Stores, Inc., 135 S. Ct. 2028 (2015). I find this to be incorrect. Abercrombie is a disparate treatment case, but it makes no mention of McDonnell-Douglas or "burden-shifting" anywhere in the opinion. Further, courts in this district have applied the McDonnell Douglas test to religious discrimination claims after Abercrombie was decided. See Dinnerstein v. Burlington Cty. Coll., 764 F. App'x 214, 217-18 (3d Cir. 2019). Accordingly, I will apply the McDonnell-Douglas framework to the instant matter.

[^1]:    ${ }^{2}$ Groff does not argue that he should have been permitted to use leave such as vacation time as part of the "approved leave" exception in the MOU, as RCAs did not earn and cannot use leave. (Groff Dep. at 148.)

[^2]:    ${ }^{3}$ Defendant makes much of the fact that Defendant's $30(b)(6)$ corporate designee could not identify the hardship that was caused to the Postal Service by skipping Groff in the Sunday schedule. However, I find this argument to be irrelevant, as the mere fact that skipping Groff in the rotation would violate the MOU is sufficient to prove undue hardship. Further, there was extensive evidence put forth by Defendant as to the effect allowing Groff to skip Sundays would have on his co-workers, which has also been held to be an undue hardship.

[^3]:    ${ }^{4}$ Groff also filed a Motion for Sanctions seeking to strike Defendant's undue hardship affirmative defense from his Answer to the Complaint due to alleged discovery abuses. This request is neither supported by the facts of record nor the Rules of Civil Procedure and is therefore denied.

[^4]:    ${ }^{5}$ Brian Hess’s declaration is attached as Exhibit "E."

[^5]:    ${ }^{(1)}$ An employee, who has received a fourteen (14) day suspension will be given a day of reflection, provided it is agreeable to the union. (see Article 16.3 of the Rural Carrier Agreement for instructions)

[^6]:    Respectfully, Chut Mo M
    Chrissy Miller
    Assistant District Representative, NRLCA

    CC: Vince Mcfadden
    Christina M. Miller, Assistant District Representative
    Installation Head
    File
    USPS03523

[^7]:    Plaintiff'sAppendix000073

