



IMPROPER INSTRUCTION: CELL PHONE USEAGE IN THE PERFORMANCE OF YOUR DUTIES

Preface

These types of grievances come about when a carrier is instructed to use their personal cell phone in the performance of their duties. The instruction itself is a violation, even if the carrier didn't use their personal cell phone, or even if the carrier doesn't mind using their personal cell phone. If a carrier doesn't mind using their personal cell phone, I wouldn't make a big deal about it, but if they would prefer not to you should absolutely pursue this grievance.

Keep in mind that Article 3 of the National Agreement gives management the authority to direct their employees in the discharge of their duties, but it also ensures that they not be in conflict with the contract which includes all handbooks and manuals. This is the basis of the improper instruction. When a manager instructs that a carrier must use their personal cell phone in the performance of their duties, this is in conflict with Article 41, and the M-41 which both have nearly identical language that proclaims that management must supply all carriers with the tools necessary to do the job.

Fortunately, management does supply the tools, there is a text messaging system built into the scanner for 2-way communication. This is personally my preferred method of communication with management, because it is the most honest way. It provides a log of everything that was actually communicated so that management may not say something inappropriate and then back track because phone calls are not recorded, the RIMS text messages are. Additionally, there will always be times where a carrier may not have a cellphone, maybe it's been left at home, maybe they didn't have the money to pay their bills, or maybe it died and they left their charger, if your management team is saying they will not check the rims text messaging system this is a safety hazard and should be addressed.

Preparation

Things you will need to include in the casefile

1. A statement from the carrier explaining that they were given the instructions, include any additional supporting documentation if available, such as personal text messages or phone logs.
2. Obtain and provide a copy of the following relevant contractual provisions: Article 19, Article 41.3.E, and Section 141 of the M-41
3. Any prior settlements, and Article 15 if you are trying to make an argument for escalated remedy.
4. Any proof that management refuses to check RIMS text messages if you are trying to articulate an Article 14 violation.
5. Any RFI involved in this case
6. Any and all extensions, appeals, and written communication with management involving this case.
7. Steward certification.



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Examination

This case is a very simple and straight forward case. As stated in the preface management has limited their Article 3 rights to manage to be within the bounds of the National Agreement. If management has given this improper instruction, it is in conflict with Section 141 of the M-41 which is incorporated into our National Agreement via Article 19 and states *“All necessary equipment and supplies required will be furnished by the U.S. Postal Service”*. In addition, this instruction is in conflict with Article 41.3.E which states *“E. When the Employer requires the use of certain supply items for the proper performance of a carrier’s functions, such items will be supplied by the Employer.”* Management’s insistence on your communication with the office on your personal cellphone implies the need for communication to be part of your carrier functions. Such example would be when management states that carriers must call the office by a certain time to let them know if they are going over 8hrs on their assignment. This function can already be performed on the RIMS text messaging system.

The first and only necessary step would be to obtain proof of the improper instructions. Such proof could be a RIMS text message, a text message on a carrier’s personal cell phone, or even just a statement from the carrier that elaborates on the fact that management had instructed them to call the office on their personal cell phone. This case works better if you have knowledgeable carriers who let management know that they would rather use the RIMS text messaging system because that would show proof that their instruction was intentional if they were instructed to use their cell phones anyway.

Arguments

The main winning argument for your contentions would be that management’s instructions were improper as they are in conflict with the National Agreement, in particular, Article 3 maintains that their management must not be in conflict with the National Agreement. The instructions were in conflict with the M-41 section 141 via Article 19 of the National agreement, and in addition, in conflict with Article 41.3.E of the National Agreement. Personal Cell phones are not gifted to carriers for their performance of their duties, and that management already has a system in place for back-and-forth communication with routes via RIMS text message.

Additionally, if management has admitted that they refuse to use RIMS text messaging, or refuse to check to see if carriers are messaging this is a serious Article 14 violation. Elaborate the times where carriers may not have access to a cell phone, such as in cases where it dies, or it is left home, and show that the RIMS text messaging system already has emergency situation texts built into it. Explain that it is a disservice to the carriers to not check RIMS because it is a false hope for them in a time of need. If a carrier’s truck breaks down or they are in danger and they have no access to a cell phone they will utilize the RIMS text message technology with the hope that management will respond or help them. If



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management refused to check RIMS this is a willful disregard for carrier safety. If this is the case, make sure to include in the casefile an interview or other proof that will put on record managements intent not to check the RIMS text messages.

Remedy

A proper remedy in this case would be for management to agree to cease and desist violation of the relevant provisions. In cases where a carrier still has a minute plan management would likely have to reasonably pay for those minutes which were improperly charged, yet this is not the case for many personal cell phone plans today. Additionally, if this is repetitive or egregious you might want to ask for a monetary escalation in order to incentivize future contract compliance. Keep in mind if you are asking for monetary escalation, you must also include in the casefile Article 15, and any prior settlements that would justify a monetary escalation.

Exemplary issue statement

Did management violate Article 3, 41.3.E, and/or Article 19 (via Section 141 of the M-41) in their instruction to City Carrier **(Placeholder for carrier name)** on **(placeholder for date)**, and if so, what is the appropriate remedy?

***If the management team has provided to you in an interview that they will not check their RIMS text messaging system**

Did management violate Article 14 in their decision not to use the RIMS text messaging system in the (placeholder for station) Installation, and if so, what is the appropriate remedy?

***if issue is repetitive add the following issue statement**

Did management violate Article 15 of the National Agreement via local settlements **(Placeholder for settlements)**, and if so, what is the appropriate remedy?

Exemplary Remedy

1. That management cease and desist violation of Article 3, 41.3.E, and Article 19 (via Section 141 of the M-41) and will not instruct carriers to use personal cell phones in the performance of their duties.
2. **(If this issue is repetitive)** To encourage future compliance, and to address noncompliance to prior local agreements, management shall pay a one-time compensatory remedy of **(insert remedy of your choosing)** to city carrier **(grievant)**.



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3. **(If management decided they will not use RIMS Text Messaging)** Management will cease and desist violation of Article 14 of the National Agreement and will utilize the already set in place RIMS text messaging system for carrier communications.
4. Management will issue all awards in this settlement within 30 days of the settlement date and will provide the union with receipts upon fulfillment. Any other remedy a Step B or Arbitrator deems appropriate.

RFI Items to support your case

1. Any supporting documentation that would otherwise prove the instruction was given, such as text messages to a carrier's personal cell phone from a manager's cell phone. (yes, you have rights to have a copy of any text messages that were used in the performance of a manager's duties).
2. Any supporting documentation that management refused to check RIMS on a regular basis, such as in an interview.