

REGULAR ARBITRATION PANEL

IN the Matter of the Arbitration) GRIEVANT: K. Mugashe
Between the) POST OFFICE: Toledo Ohio
UNITED STATES POSTAL SERVICE) CASE No.: C16N-4C-C 18076785
and) UNION: 1462 C-17
NATIONAL ASSOCIATION OF LETTER CARRIERS) DRT No.: 11-431063

BEFORE: DONALD J. BARRETT, ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Ms. Barbra Cook, LR Specialist¹

For the Union: Mr. Andy Adkinson, Vice Pres. Branch 100

Place of Hearing: Toledo Ohio Post Office

Date of Hearing: April 24, 2019

AWARD: This grievance is sustained

Date of Award: May 14, 2019

Award Summary

The Union provided persuasive evidence of management's continuing violation of Article 17 of the National Agreement by failing to provide information properly requested by the Union for the purposes of the grievance-arbitration procedure.

The case file is complete with previous settlements of similar issues that appear to have had no positive impact on local Management.



Arbitrator

¹ In the second seat for the Postal Service was Ms. Pat Turman

STATEMENT OF PROCEEDINGS:

The matter contained within this document was brought to an arbitration hearing at the Postal Facility located at 435 South St. Clair Street, Toledo, Ohio pursuant to the provisions of the 2016-2019 National Agreement (Agreement or Contract) between the National Association of Letter Carriers (Union), and the U.S. Postal Service (Service or Management).

The Union filed its initial grievance in this matter on December 20, 2017, and the parties met throughout their grievance process but were unable to resolve their differences and the Union then timely appealed this grievance to arbitration.

As a current member of their Regular Regional Panel I was selected to hear this grievance at arbitration, and did afford the parties a full, fair, and objective opportunity to be heard, to present argument, evidence, and witnesses on behalf of their position(s). The parties did exercise those opportunities with enthusiasm and vigor.

The parties submitted their intention to present witnesses on their behalf, and requested that each witness be duly sworn an oath prior to being examined. This request was so honored.

Counsel for each party was fully prepared to proceed with the case in chief at hearing, was articulate, professional, and enthusiastic throughout.

The Union called the following witnesses:

Ms. Keena Mugashe, Letter Carrier, Steward (Grievant)

Mr. Michael Hayden, President, Branch 100, NALC

3.

The Postal Service called the following witness:

Mr. Spencer Utley, Manager, Kenwood Post Office

The Union provided a written and oral OPENING STATEMENT, and an oral CLOSING STATEMENT into the record.

The Postal Service provided a written and oral OPENING STATEMENT, and an oral CLOSING STATEMENT into the record.

JOINT EXHIBITS:

Joint 1, The National Agreement, including the Joint Contract Administration Manual (J-CAM)

Joint 2, Moving Papers, Pages 1-299

STIPULATED FACTS NOT IN DISPUTE BY THE PARTIES:

None were offered at hearing.

ISSUE TO BE DECIDED:

“Did management violate the National Agreement including, but not limited to, Articles 5, 15, and 19, when it failed to comply with (multiple)¹ Formal A Resolutions 294-C-17/295-C-17? If so, what is the proper remedy?”

¹ The Union argued that the issue should be inclusive of, “multiple restitutions unresolved.” I am satisfied that the Step B Team issue stated above with the inclusion of the “multiple” is sufficient to fully comprehend the appropriate issue before me.

4.

BACKGROUND:

The Union filed a grievance dated December 20, 2017 alleging Management failed to comply with previous formal, and informal settlements.

That the Union grieved Management's continuous failure to provide information requested for the processing of grievances, forcing the Union to submit said grievances for processing absent the requested information needed to defend their position.

The Union maintains that these continued failures to provide information hamper their ability to properly represent their member's grievances, and harm the relationship between the Union and its members.

The Service has denied these allegations in the instant case, and offers that they provided all information to the Union except one request which Management stated did not exist.

The parties were unable to resolve their differences in this matter with the Union appealing this grievance to arbitration.

RELEVANT CONTRACTUAL PROVISIONS:

Article 15, Grievance-Arbitration Procedure

Section 1. Definition

"A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement."

Article 17, Representation

Section 3. Rights of Stewards

5.

“The steward, chief steward or other Union representative properly certified in accordance with Section 2 above may request and shall obtain access through the appropriate supervisor to review documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied.”

POSITION OF THE PARTIES IN THIS MATTER:

The National Association of Letter Carriers

The Union maintains that Management has violated the numerous, previously issued grievance and arbitration settlements, including the agreement reached between the Union branch president and Toledo Postmaster² in which Management agreed to cease and desist from failing to provide the Union with requested information.

That this local settlement was binding on both parties, and included future payments of two hundred dollars (200.00) for infractions.

That in spite of the thirty one (31) other settlements³, and arbitration awards local Management continues to violate the Union’s right to receive requested information for the proper processing of grievances on behalf of their members.

That despite these numerous awards with vast sums of compensation being paid to the Union and members, Management shows no signs of complying with the agreements/awards.

The Union maintains that Steward Mugashe submitted no less than four (4) requests for information to Manager Utley for the exact information on December 7, 8, 12, and 18, 2017.

That all such requests made to the manager went unfilled throughout the process.⁴

² See J-2, Page 30 dated April 11, 2017

³ See J-2, Pages 36-274

⁴ See J-2, Pages 32-35

6.

That the steward was not provided any reason for such failure to provide the requested information despite the many requests made, with the manager signing each request as received by him, offering further proof he was aware of the requests.

The Union argues that the steward was forced to send the various grievances associated with these Requests for Information (RFI) forward without the needed information or risk being untimely to the grievance procedure.

That the Union, and its members suffer much harm by Management's continued failures to abide by the settlements/awards, and National Agreement.

The Union argues further that previous orders, agreements and monetary payments have done little to impress upon Management their obligations to the Agreement, and now requests this grievance be sustained, issue an order to cease and desist failing to comply with grievance settlements, decisions, and awards.

That the arbitrator issue a remedy of significant nature to insure future compliance, to award the sum of two hundred dollars (200.00) to five employees named within, compensate the Union Two Thousand dollars (2,000.00) to insure timely compliance with grievance settlements, and One Thousand dollars (1,000.00) to reimburse the Union officers wages for time and resources spent processing and preparing this grievance for arbitration.

The U.S. Postal Service

The Service maintains that the Union lacks proof regarding their claim that the manager failed to provide the information requested.

That each request for information submitted contained different requests, yet the Union claims the first request through the fourth request were the same.

That the fourth request made demonstrated the failure to provide the information requested in the first request is simply wrong and must be discarded as such.

7.

That the manager provided credible testimony of his compliance with all information requested, with the exception of the postmaster's clock rings (the postmaster does not submit to "clock rings"), and informed the steward of this fact.

That the manager gave the time requested by the steward in each instance, and the ever decreasing amounts of time she requested demonstrate evidence of her having received the information she sought, instead of seeking greater amounts of time if she had not received the information.

That the Toledo Management continues to evolve toward a better working relationship with the Union, yet the Union continues to seek ever increasing payouts to the "house" instead of attempting to work together with Management.

The Service requests that the arbitrator deny this grievance in its entirety.

FINDINGS & OPINION OF THIS ARBITRATOR:

The matter brought before me by the parties is not a stranger to me, or other arbitrators in the recent past. While it has insured gainful employment for the arbitrator, it more importantly demonstrates what can only be reasonably viewed as a continuing deterioration of the parties working relationship.

There can be little dispute that when a voluminous history of agreements, settlements, and arbitral awards fail to stem the flow of repeated violations resulting in ever increasing penalties, including vast sums of money paid out by the Postal Service,⁵ the Union can only feel continued frustration and despair – and in the ranks of labor relations too.

The record before me in this matter is replete with such instances of the Union filing grievances over Management's failure to provide information, either timely, or not at all.

⁵ See J-2, entire case file for evidence of such.

8.

The seriousness of this issue need not be explored any further than a review of the settlement between the Postmaster Sinkfield-Leach, and Branch President Hayden.⁶

This is a unique document that recognized Management's past failures to provide information sought by the Union.

It states in relevant part, "In order to give management a chance to make their employee's aware of their obligations regarding these issues and to avoid further violations...

Management agrees to Cease and Desist not providing information. If the requested information is not immediately available (sic) management will inform the steward the reason for the delay. To solldify (sic) the Postal Service's commitment, any future proven violations will result in a remedy of \$200.00 for the infraction."

This is heady language agreed to by the parties in 2017 that recognized the potential for future violations as well as those alive at the time of this signing.

While the Service may attempt to distance themselves from this document today (I understand why) it remains a binding agreement between the parties until such time as they mutually agree to change it, or cause its expiration.

That said, the matter before me comes down to simple facts. The Union made no less than four formal requests for information which they claim was never received, while the Service, through their witness Mr. Utley claims that he did provide all requested information with one exception, the postmaster's clock rings.

Mr. Utley appeared before me as a very credible witness. He seemed confident that he provided the information that he could, and informed the steward of the unavailability of the postmaster's clock rings, while the steward was adamant that he did not.

The only problem with sincerity even in the semi-informal setting of an arbitration it is not fact.

⁶ See J-2, Page 30

To establish a fact there must be an element of proof associated with it beyond a witness's sincere retelling of events.

In each of the information requests⁷ submitted there is proof of submission by the steward, and receipt by the manager but no evidence that the information was provided.

The amount of time allowed the steward for her purposes, and dates the times will be afforded is stated on each form, yet there is no evidence, even where it could be stated on the form, "If time or information is not provided today indicate Time/Date it will be available" that the information was provided.

It matters not one iota whether the Arbitrator may believe the witness, without such proof of compliance there can be no finding to support such assertions, and I am left with the steward's claim that she did not receive her requested information.⁸

The statement offered in the case file by Manager Utley states only that he provided the information to ..."Keena Mugashe on the RFI's she submitted on December 7th, December 8th and December 12th." He does not state when he gave her the information.⁹

Again, without evidence that he provided such information such as a notation on the Union Information Request forms, or something similar that he provided, and requested the steward sign as receipt for the provided information I am left with only the fact(s) that the information requests were made.

While the Service argues throughout the case file that the Union's information requests were for different things at different times, I am persuaded that each request was for the same information after reviewing each one.

⁷ See J-2, Pages 32-35

⁸ I do question the steward's repeated request for "clock rings" of the postmaster. It seems very likely that a postmaster of the size city of Toledo surely would not be submitting to "clock rings", and an experienced Union steward would know this.

⁹ See J-2, Page 292

10.

The Union's right to information is a sacrament granted to the Union by statute, law, and bargaining history.

The Civil Service Reform Act of 1978 imposes a very specific statutory obligation on an Agency's management to, "...furnish to the exclusive representative involved, or its authorized representative, upon request and, to the extent not prohibited by law, data (A) which is normally maintained by the agency in the regular course of business; (B) which is reasonably available and necessary for full and proper discussion, understanding, and negotiation of subjects within the scope of collective bargaining." ¹⁰

The wrongful denial of information to the exclusive representative violates 5 U.S.C. 7116(a) (1), "interference with employee rights, (5) refusal to bargain in good faith, and (8) a failure to comply with the provisions of the CSRA." This is the law. It is also a right guaranteed to the Union that historically is not lightly trampled upon without the Union's immediate, and impressionable response.

The National Agreement between the parties further establishes the right of the Union to obtain information, "...necessary for processing a grievance or determining if a grievance exists..."¹¹

Local Agreements¹², Step B decisions¹³, and countless other settlements contained in the case file before me clearly establish a pattern of total indifference toward the right of the Union to obtain information that they alone believe is needed to investigate a potential grievance, or file a grievance.

The sheer volume of these past "settlements", and "cease and desist" orders is mind boggling. Clearly the former postmaster recognized the gravity of this ongoing issue by the seriousness of her mutual agreement with the invocation of a monetary payment for future violations.

¹⁰ See 5 U.S.C. 7114, 1978

¹¹ See Agreement, Page 82, Article 17.3

¹² J-2, Page 30

¹³ See J-2, Pages 36 & 39 among many others.

11.

In spite of all the above cited efforts, despite the obligations to the law as it is clearly written, Management appears to continue to violate Article 17 of the Agreement by the facts established in this grievance.

The overwhelming body of arbitral, and legal precedent supporting the Union's right to obtain the information they seek for the administration of their duties is likely greater than any other single issue.

As one arbitrator pointed out, "the object and purpose of arbitration is to arrive at a fair and just decision, and to this end parties should be assisted in obtaining competent and material evidence where such may reasonably be had."¹⁴

In the instant matter before me, where the Union has provided persuasive evidence of a violation(s) the duty now is to assess a fair, reasonable, and just remedy.

The most relevant question associated with that assessment has to be what is just for the Union, and what will serve upon Management the need to finally, and unequivocally abide by the Agreement, and the law?

I am not convinced of the harm done to the employees whose clock rings, or employee all reports were not provided. While the Union rightfully argues that there is harm to their organization, and its members there must be direct, clear and convincing evidence of such harm to the individual due to Management's failure to provide such attendance reports.

I am unaware if a separate grievance was filed for any loss associated with the individual employee's clock rings, and if so that is not properly before me.

I am also averse to recompensing a Union steward for time spent performing her duties "on the clock", and do not accept the argument that if not for this grievance she would be working on something else for the members. The steward is the only Union official paid by the Postal Service to perform...

¹⁴ See Chesapeake & Potomac Telephone Co. of West Va., 21 LA 367

12.

...Union duties, and to pay an additional sum for that work already paid for would be, in my opinion, improper and without precedent.

On the other hand, the Union itself has been forced to grieve the same violation repeatedly with no apparent intention by Management to comply.¹⁵

The needless expense associated with such time and effort to grieve, and arbitrate such matters, even after Management agrees it should not be repeated give good cause for a remedy that may serve to impress upon the violating party the seriousness of such infractions.

Simply put, no matter how trivial the Service may view a Union information request, or question the reasons for such, it is their right alone to make such a determination as to what information is needed to determine if a grievance exists, to investigate a grievance, or to file a grievance. As stated above, it is the law!

When past settlements result in ever increasing penalties, in an effort to stop such violations, and these do not impress local Management enough to refrain from such violations, the Union rightfully seeks redress from an arbitrator.

Therefore, based on the evidence before me, I find Management violated Article 17 of the National Agreement, as well as past cease and desist orders related to failing to similar/same issues as that before me, and do order the following.

AWARD:

This grievance is sustained in favor of the Union, Branch 100.

1. Local Toledo Management is hereby ordered to immediately cease and desist from any future violation of a same/similar nature or face penalties beyond those imposed in this award.

¹⁵ The very competent Service advocate argues that the new postmaster is slowly changing the culture in Toledo for the better but it takes time (weeds). I have no doubt as to her sincerity yet as stated above, I must rely only on facts and evidence before me. The former postmaster also appeared to demonstrate the "best of intentions."

13.

2. The Union is to receive payment from the Postal Service, Toledo Ohio for the sum of Five Thousand Dollars (5,000.00) toward the costs associated with having to file/defend another grievance of same/similar nature that has previously been settled.

3. Management, Toledo Ohio is ordered to comply with all rightful information requests in a timely manner, consummate with the timelines of Article 15 for the filing of a grievance, or give good cause, in writing to the Union why this cannot be done.

4. Any failure of Management to comply with this order without good cause evidenced shall result in a further payment to the Union of four hundred dollars (400.00) per incident for a period not to exceed two (2) years.

5. The Union is ordered to assist local Management in their efforts to comply, with good faith in an effort to improve the working relationship.

Nothing follows. Attested to this May 14, 2019 @ Manatee County, Florida