REGULAR ARBITRATION

In the Matter of the Arbitration ) Class Action
Between
) P.O.: Rkv-Twinbrook
UNITED STATES POSTAL SERVICE ) USPS#: K11N-4K-C 13379066
And
) DRT#: 13-293363
National Association of Letter Carriers, ) Union#: 55-13-KA-79
AFL-CIO

BEFORE: Arbitrator Kathryn Durham, J.D.,P.C.

APPEARANCES:

For the USPS: Anita O. Crews, Labor Relations Specialist
For the NALC: Alton R. Branson, NALC Advocate

Place of Hearing: Rockville, MD
Date of Hearing: May 12, 2014
Date of Award: June 9, 2014
PANEL: Capital Metro District

AWARD SUMMARY

The grievance is sustained. The remedy is that Management shall pay the local Union, NALC Branch 3825, the sum of $420. A cease and desist order would not be sufficient given Rockville managements' longstanding, repeated disregard of its duty to provide relevant information to the Union, as evidenced again in this case.

Kathryn Durham, J.D.,P.C.
I. ISSUE as framed by the Arbitrator

Whether the Union is entitled to a monetary remedy for local management's failure to provide relevant information, pursuant to a RFI and Article 31, within the locally-agreed upon timeframe? If so, what is the appropriate remedy?

II. FACTS/POSITIONS OF THE PARTIES

On September 24 or 25, 2013, the local Union was due information legitimately requested pursuant to an RFI in order to investigate and process a grievance. The information was not provided. On September 25, the Union appealed to informal A where the grievance was not resolved and the information was not provided. The parties met at formal A on October 24, 2013 and discussed the case. The information was not provided and the Step A official did not have his formal contentions prepared. Management did not agree to provide the information at this time. The Union offered an extension, and management requested first 400 hours, then 100 hours, to prepare its formal contentions. Union representative Branson considered this unreasonable and moved the information grievance to the DRT team. The DRT team concluded by decision dated December 18, 2013 that the Union was entitled to the information, and that it must be provided immediately to the Union if it had not already been provided.

The parties impassed the question of whether the Union was entitled to a monetary remedy (approximately $750.00).

The Union appealed to arbitration its claim for $750 arguing that a monetary remedy to the Union is necessary to persuade management to comply with its duties/agreements and to compensate the Union for its time in pursuing the case and its copying costs, which Mr. Branson claimed were $280 (approximately 2800 pages at 10 cents per page). Mr. Branson computed the time as being approximately 30 hours at Step B and arbitration at $28.02/hr.

The Union's evidence is of a hundred plus similar past cases in Rockville where management fails to comply with its agreements regarding processing information requests. See Jt A, pps.21 – 100 and 101-330 which are agreements and Step B decisions from 2002 - 2013.

The local agreement at bar is referenced as follows:

Management agrees to a recommittal of prior agreements to provide information requested by the Union within 24 hours as well as the June 28, 2011 Labor/Management minutes (sic). As previously agreed, if there is an extensive information request, the
Postmaster or designee, will notify the local Union president, or
designee, and a mutually agreeable date to provide the information
will be worked out which will comply with the spirit and intent of
good-faith bargaining.

In this grievance, management failed to provide the information
within 24 hours. Therefore, management will award the Union
$600.00 to be given to the charity of the Union's choice due to the
ongoing and escalating remedies on this issue. (This is consistent
with numerous prior grievance resolutions including precedent
setting Step B decisions.)

In an ongoing effort to improve the Labor/Management climate at
the Rockville installation, the Union will waive the monetary
payment in this instance. Management agrees to provide the
information requested in this grievance within 24 hours.
Management violated the information request agreements for the
city of Rockville on August 11, 2011.

Signed by Kenneth Lerch (Union) and Gregory Migliori (Mgmt) Jt.

The Union relies on the decisions of Dr. Andree Y McKissick
(K11N4KC13380538, 4.11.2014); Kathryn Durham (K11N4KC13377363,
4.30.2014); Stanley Sergent (H01N4HC03072480, 05. 13.2004); Thomas Erbs
(J01N4JC08106377, 04.10.2008); and others to support a substantial monetary
remedy in situations where management is clearly and egregiously in dereliction
of its agreements with the Union. The Union argues that without a substantial
monetary remedy Rockville will continue flagrantly ignoring the Union to the
detriment of the bargaining union members. The Union tired of waiving the
remedy of money to charity as had been done in Rockville in the past.

Management’s position at the Steps A is not part of the record. We simply know
that management refused to provide the information at the local level. At the
DRT level, management agreed that local management violated the agreements
reflected above by not providing the requested information timely, but argued that
a monetary remedy to the Union is not appropriate for the following reasons:

1. Management had not been warned of the consequences of non-
compliance.
2. There is no indication of an egregious violation.
3. The Union’s request is punitive because the Union has not shown a
correlation between the harmed party and the requested remedy.
4. Punitive remedies are not allowed by the National Agreement.
III. OPINION

The evidence clearly demonstrates the longstanding nature of Rockville management's refusal to timely provide relevant information pursuant to its obligations under the National Agreement.

Given the longstanding nature of the problem reflected at pages 21-330, the Undersigned is not persuaded that management was unaware of potential consequences of its repetitive violations. The file in our case contains the memo dated May 31, 2002, from Patrick Donahoe to VPs, Area Ops Mgr of Capital Metro Operations reiterating as follows:

Compliance with arbitration awards and grievance settlements is not optional. No manager or supervisor has the authority to ignore or override an arbitrator's award or a signed grievance settlement. Steps to comply with arbitration awards and grievance settlements should be taken in a timely manner to avoid the perception of non-compliance, and those steps should be documented.

Additionally, there is not indication in the file that Rockville had any reason to withhold the information. Thus, management's actions are indeed egregious.

It is well understood that there are times when a monetary remedy is necessary to curtail egregious, flagrant, repetitive violations as indicated by the Union's citations. The situation in Rockville has progressed significantly beyond one where a cease and desist order could be expected to have impact on management.

Reaching a decision as to how much money in remedy to the Union is necessary to begin to change management's practice is not an easy, clear-cut process. The Union stated that it spent 30 hours at Step B and arbitration and spent $280.00 in copying charges. Representative Branson's verbal description of copying charges of $280.00 incurred at a copy store is not accepted because he had no receipt or verification of such charge. Expectation of reimbursement of such a large cost incurs the obligation to produce a receipt.

Mr. Branson contended that this case took the Union representative(s) 30 hours to prepare and present at Step B and arbitration. This issue is clearly ongoing and much of the thought process and work would have been previously done. The case at bar is identical to the case decided by Arbitrator Dr. Andree Y. McKissick, K11N4KC13380538 / 501352119, April 11, 2014, wherein Alton Branson NALC Region 13 Advocate was also the advocate. Therefore, the undersigned is unconvinced that 30 hours was a credible, reasonable claim for study and prep time in the case at bar.
In the decision rendered by the undersigned in a very similar Rockville grievance (K11N4KC13377363/ DRT# 13-291597, April 30, 2014), the remedy to the Union was $420.00. The April 2014 award was based on local President Lerch's credible testimony that 15 hours of time was necessary and was used, and that the local union paid him at the rate of $28.02.

The necessity of a monetary remedy in future cases of this nature may be considered moot by a subsequent arbitrator if management in Rockville begins now to clearly establish a new, continuing precedent of complying with its obligations to the Union and the bargaining unit which it has so long ignored.

IV. AWARD

The grievance is sustained. The remedy for the case at bar is that Management shall pay the local Union, NALC Branch 3825, the sum of $420.00 to be used for representational purposes.

Kathryn Durham, JDPC, Arbitrator

Kathryn Durham, JDPC, Arbitrator