

REGULAR REGIONAL ARBITRATION

In the Matter of the Arbitration)
)
between)
)
UNITED STATES POSTAL SERVICE)
)
and)
)
NATIONAL ASSOCIATION OF)
LETTER CARRIERS, AFL-CIO)
_____)

Grievant: Class Action
Post Office: Frederick, MD - MPO
USPS Case #K11N-4K-C17054502
BRANCH Case #05-16-LH-555
DRT #13-381260

BEFORE: Tobie Braverman ARBITRATOR
APPEARANCES:

For the U.S. Postal Service: Carlos A. Cantor

For the Union: Alton R. Branson

Place of Hearing: Frederick, MD

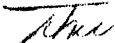
Date of Hearing: March 8, 2017

AWARD: The Grievance is sustained in part. The parties' agreement that union time requests may not be delayed is unenforceable under the National Agreement. The Employer is directed to grant union time as requested unless a delay is reasonable in the circumstances presented by each particular request and after discussion with the steward to determine an alternative time. The Union shall be paid the sum of \$150.00 as compensation for the need for the processing of repeated grievances on this issue and to impress upon the Employer the need for compliance with Article 17.3.

Date of Award: April 5, 2017

PANEL: USPS Capital Metro Area/ NALC Region 13
Award Summary

An agreement that removes all managerial discretion to reasonably delay union time requests violates Article 17.3 of the National Agreement. The delay or denial of such requests, however, must be reasonable based upon the circumstances of each request, and there must be discussion with the requesting steward to determine when delayed union time will be granted.



Tobie Braverman

The instant grievance is submitted to the Arbitrator pursuant to the terms of the grievance arbitration provisions of the Collective Bargaining Agreement of the parties. Hearing was held at Frederick, Maryland on March 8, 2017. The parties argued their respective positions orally at the conclusion of hearing, and the hearing was declared closed on that date. The parties stipulated that the matter is properly before the Arbitrator for decision. The parties further stipulated that the issue before the Arbitrator, as framed by the B Team, is as follows:

Did Management violate Articles 5, 15.1, 15.2, Step B and 17.3 of the National Agreement as it relates to prior grievance settlements and precedent setting Step B Decisions, Pre-Arbitration Settlements when on September 29, 2016 the Shop Steward, Jose Molina, was denied Union time, and if so, what is the appropriate remedy?

FACTS

The facts of this case are straight forward and, for the most part, undisputed. The instant grievance arose out of an incident which began on September 29, 2016. The Frederick post office has two Union stewards. Jose Molina is the certified alternate steward. On September 29, he submitted a written request for union time to his supervisor, Linda Roskowinski, seeking eight hours of union time for an Informal A Step grievance as well as to investigate three other grievances. According to Molina's undisputed testimony, Roskowinski advised him that she would have to speak to the Postmaster, Sharon Spence, before she could approve the time. Spence reviewed the request, and about an hour later, the form was returned to Molina, indicating that the time was approved for October 1, 2016. Both Spence and Molina testified that there was no discussion regarding the reason for the delay or the amount of time which was granted for

October 1 at that time. Molina was given 1.42 hours of union time on October 1 and an additional 5.49 hours on October 5, although it is unclear whether this October 5 time related to the September 29 request or some other subsequent request.

The issue of providing union time has been a recurring one in this office. The grievance file includes four B Team Resolutions, two in 2011 and two in 2015, finding that the office had refused to provide union time. The 2015 decisions state that the Employer must “cease and desist in refusing to provide reasonable union time without a reasonable and valid explanation”, and that if the Employer chooses to delay the provision of union time, “the parties must mutually discuss and determine when time can be provided.” Those decisions further provide that “continued and repeated violations ... shall result in ... compensatory remedy for the Union’s continued necessity to file additional grievances.” In addition to these Step B decisions, the file contains 42 Formal A and 16 pre-arbitration settlements between these parties on this issue. Thirty-three of the Formal A resolutions are dated January 22, 2016. These include identical language which provides that: “As a settlement Management agrees to cease and desist from violating Article 17.3 of the National Agreement and will grant Union time in the future without delaying the Union’s request.” The Employer further agreed to compensate NALC Branch 3825 the sum of \$42.00 in each of those resolutions. This language is also incorporated into an additional twenty-eight subsequent pre-arbitration resolutions and Formal A settlements, and the payments to the Union increased to \$50.00 and then \$100.00 dollars.

Both Molina and Chief Steward Laura Hennessey testified that supervisory personnel have stated that Molina is not necessary, and that she should be able to handle all of the Union matters. While Hennessey is given a significant amount of Union time on a daily basis, she testified that

she is unable to keep up with the representation of members in disciplinary matters, investigation and filing of grievances, and the processing of grievances. She spends a significant number of hours working on grievances at home. Hennessey further testified that as a result of the lack of sufficient union time as well as the Employer's failure to meet at Formal A to process grievances, there is currently a back log of more than 600 grievances in Frederick, all of which have been the subject of serial extensions dating back to November, 2015. Branch President Kenneth Lerch testified that the problem of union time has been one of long standing in this office. In fact, prior to the merger of the Frederick NALC branch into Branch 3825 in November, 2015, there had been no Union time at all granted for a full year. In light of this history, Lerch testified that the requirement that was agreed to by the parties that Union time will not be delayed, was necessary and payment to the Union is appropriate to encourage future contractual compliance.

Postmaster Sharon Spence testified that while she signed the Formal A and pre-arbitration settlements which include the language quoted above as well as the payments to the Union, she did not agree with them. She further testified that while she attempts to provide Union time when it is requested, it cannot always be granted immediately. It is also necessary to consider staffing necessary to deliver the mail, the timeliness of the request, and the needs of the Service. She testified that when she does deny a Union leave request, she makes every attempt to provide at least a portion of the number of hours requested as soon as possible.

The instant grievance was filed as a Union grievance alleging that Union time was unduly delayed and was denied in substantial part. It was impasse at Step B and proceeded in due course to arbitration.

POSITIONS OF THE PARTIES

Union Position: The Union contends that it has met its burden of proof to demonstrate both a contractual violation and that the remedy requested should be awarded. The Employer's obligations under Articles 17 are clear. While the Employer contends that it grants plenty of union time, and that the records reflect that the stewards do get union time, the evidence also demonstrates that it is clearly insufficient as reflected by the back log of 615 grievances. The granting of reduced hours of union time together with the delay in union time, results in the delay of the processing of grievances which in turn causes a serious grievance backlog. The end result is a delay in remedying the underlying issues which give rise to those grievances. This problem has been ongoing, and the Employer has agreed to provide union time without delay in forty-two settlements. Nonetheless, union time requests are clearly delayed and not provided in the amounts requested. The Employer has unquestionably failed to abide by its serially agreed upon settlement. Further, there has been no discussion with the Union stewards regarding the delay and reduction of union time in an effort to agree upon a time and amount to be granted. There have been many violations over time, and they continue to date. Not only does this require extensive time and expense on the part of the Union to process recurring grievances, but it results in a loss of credibility with its members. The Employer's continued violation is egregious, and an escalating monetary award is therefore appropriate in this case. The grievance should be sustained in its entirety and the Union should be awarded the sum of \$500.00 as compensation for its need to pursue multiple grievances on this subject as well as to impress upon the Employer the need for future compliance with its contractual obligations regarding the grant of Union time.

Employer Position: The Employer argues that Union has failed to meet its burden of proof to establish any violation of the National Agreement or any justification for payments to the Union. Ultimately, the Frederick, Maryland Postmaster is not an expert on the National Agreement, and did not understand the impropriety of the payments which were being made to the Union on grievance settlements. The Union's goal here is to increase its own treasury, not to benefit its members. This grievance is about union time, but there was no showing that sufficient time was not given. There was further no testimony that any member was harmed as a result of the delay in granting union time. There is nothing in the National Agreement that provides that union time must be given on the day requested. The JCAM supports this conclusion by providing that in the event that a request is delayed, reasons should be given and the parties should discuss when the time will be given. The grievance settlements which provide otherwise are therefore in violation of the National Agreement. There was no demonstration that Molina needed eight hours of Union time. There was therefore no need to provide him with all of that time. The reason for the backlog of grievances relates to the failure to meet on the grievances, not on the lack of union time. In fact, the Chief Steward is given union time every day. There is no question but that this office provides many hours of union time, and that both Hennessey and Molina are provided with Union time as reflected by the TACS reports. Finally, the monetary amount requested is punitive in nature. The purpose of remedy is to make whole, not to serve as punishment. There was no demonstration of any harm to either Molina or the Union in this case. Under these circumstances, the monetary remedy requested here is strictly punitive, and a punitive remedy is clearly inappropriate. The grievance should be denied.

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 15 - GRIEVANCE PROCEDURE

Section 3. Grievance Procedure – General

A. The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in resolution of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end. ...

ARTICLE 17 - REPRESENTATION

Section 3. Rights of Stewards When it is necessary for a steward to leave his/her work area to investigate and adjust grievances or to investigate a specific problem to determine whether to file a grievance, the steward shall request permission from the immediate supervisor and such request shall not be unreasonably denied. ...

JCAM 17-5 Right to Steward Time on the Clock.

Although a steward must ask for supervisory permission to leave his or her work area ... to pursue a grievance or potential grievance, management cannot 'unreasonably deny' requests for paid grievance-handling time.

Management may not determine in advance how much time a steward reasonably needs to investigate a grievance. ... Rather, the determination of how much time is considered reasonable is dependent on the issue involved and the amount of information needed for investigation purposes. ...

Steward time to discuss a grievance may not be denied solely because a steward is in overtime status ... It is the responsibility of the union and management to decide mutually when the steward will be allowed, subject to business conditions, an opportunity to investigate and adjust grievances. ...

If management delays a steward from investigating a grievance, it should inform the steward of the reasons for the delay and when time will be available. Likewise, the steward has a obligation to request additional time and give the reasons why it is needed. ...

DISCUSSION AND ANALYSIS

This case involves two related questions concerning the application of the union time provisions of Article 17 of the National Agreement. First is the question of whether the Employer violated those provisions, and by extension, the negotiated settlements between the local parties regarding union time when it delayed the grant of union time to Steward Molina on September 29, 2016 and reduced the time provided. The second hotly contested issue in this case is whether the remedy requested here in the form of payment of money to the Union is appropriate.

As noted above, the issue of Union time has been an ongoing problem in the Frederick, Maryland main post office for a number of years. The grievance file includes B Team resolutions dating back to 2011 regarding this issue as well as the failure of management to meet at Formal Step A on grievances. The unrefuted testimony at hearing was that for a period of fourteen months in 2014 and 2015, no union time whatever was granted in the office. In fact, the testimony was that the inability to investigate, file and process grievances due to these two related issues, granting of union time and the failure to schedule Formal A meetings, was what led the local NALC branch to combine with Rockville, Maryland Branch. According to Ken Lerch, after that merger, union time began to be granted, but there the issues with granting sufficient time and with delaying union time remained. In order to resolve a significant number of grievances on the issue, the parties entered into a series of settlement agreements which provided that the Employer would grant union time "without delaying the union's request".

As noted above, the Employer argues first that this language violates the National Agreement. The Union argues that although it is perhaps more stringent than the contractual

language of Article 17.3, it was necessary in the circumstances of this office, and is permissible pursuant to the broad settlement authority granted to the parties by Article 15.3(A). The Union is correct that the parties are granted broad settlement authority to resolve grievances in the interest of settlement at the lowest possible level. Those settlements must, however, remain consistent with the language of the National Agreement. Just as an LMOU may not alter the terms of the National Agreement, a grievance settlement which cannot be interpreted within the bounds of the National Agreement is invalid and unenforceable. The local parties simply do not have authority to make agreements which contravene the terms of the National Agreement, either by granting additional rights or placing additional limitations which go beyond those set forth in the National Agreement and which cannot be interpreted in a manner consistent with the National Agreement.

In this case, the settlements regarding union time include language which appears to provide that any request of union time must be honored as requested without any discretion on the part of the Employer. While there was no testimony regarding any definition which the parties gave to the language of the settlements, clearly this is the Union's interpretation of the language. The problem, however, is that the JCAM clearly anticipates that the Employer retains some discretion regarding the timing of requests for union time. The contractual language provides that the steward must request the time, and that the requested time will not be unreasonably denied by management. This language clearly anticipates some discretion on the part of supervisors to deny union time if to do so is reasonable under the circumstances. The JCAM further provides that if a request is delayed, the steward should be informed of the reasons and the parties should determine when time will be provided. Taken together, this language clearly anticipates some discretion on the part of the Employer to deny or delay union time when it is reasonably necessary to do so.

In the case of this office, however, union time was clearly unreasonably delayed, reduced and denied consistently over the course of several years, leading ultimately to the grievance settlements which completely withdrew discretion from Employer. While this approach was entirely understandable under the circumstances, it nonetheless violated the terms of the National Agreement. The parties simply cannot negotiate away rights which either party has under the National Agreement at the local level. The settlement authority of Article 15, while broad, is not unlimited. The limit of that authority ends where the settlement contravenes any provision of the National Agreement.

Having determined that the agreement made by the parties is unenforceable due to its restrictions which go beyond the limits of the National Agreement, it is still necessary to determine if the delay and reduction of the requested union time in this instance violated Article 17.3. Clearly the language of Article 17.3 and the further explanation of the JCAM dictate that union time be granted without unreasonable delay and in the amounts requested unless that amount is demonstrated to be unreasonable. The JCAM clearly anticipates that the parties will have a discussion if there is any need to delay or reduce requested union time. That did not occur here, and it does not appear that the Employer has made any effort to work with the union on this issue in general. Instead, Frederick management has made it clear that, despite the fact that contractually the station has two stewards, the work should be handled by one, and union time is provided to the second steward only begrudgingly. This is simply not a judgment which the Employer has the right to make. It is not up to the Employer to dictate which steward will work on grievances.

While the Employer may delay a request for union time, its delay must be reasonable

under the circumstances presented by each particular request. Clearly in some cases, regardless of mail delivery needs, union time must be granted immediately, as in the instance of the need for a steward in a currently occurring disciplinary matter or in the event of a grievance which must be discussed immediately to prevent an untimely filing. On the other hand, it may well be reasonable in other instances, such as a review of documents to investigate an overtime grievance, to postpone the request for a short period of time in order to plan appropriate scheduling. In that event, however, it is necessary to actually discuss the matter with the requesting steward. That discussion could in fact reveal a greater urgency of which the Employer was not aware. It could also reveal a lack of need for immediate time, and allow for the arrangement for a later mutually agreeable time. In either event, what Article 17 requires is that both parties act in a reasonable manner, which includes some actual discussion, to permit stewards to do necessary grievance work in a timely fashion.

In this case, it is not clear that union time was required on the same day as it was requested. Despite this fact, however, it is clear that the time was denied without providing any explanation and without having any discussion between the parties to determine either the urgency of the time requested or the necessity for the full eight hours requested. Despite this lack of discussion, the time was delayed, and far fewer hours were granted. While, as the Employer notes, this office grants a significant amount of union time, the total amount granted over the course of weeks or months does not justify the delay or denial of time requested in any particular instance. Each time there is a request for union time, it must be granted unless delaying it can be demonstrated to be reasonable or it can be shown that the request itself is unreasonable.

Having determined that the Employer has inappropriately denied union time in this case,

the question remains as to the appropriate remedy. As the Union points out, the issue of union time has been ongoing in this office since at least 2011. While the Employer advocate noted that he doubted the testimony that for fourteen months there had been no union time granted whatever, the testimony of Union President Lerch on this point was undisputed. Additionally, although the Employer contends that Postmaster Pence was ignorant of the contract language, regardless, it is beyond dispute that there have been approximately sixty grievances on the issue of union time in this office since 2015. It is simply beyond argument that this has been a recurring problem on which the Union has been required to file a large number of grievances which were settled by the Employer repeatedly pledging to do better and paying the Union a sum of money.

While the Employer argues that these settlements are strictly punitive, there is no doubt a cost to the Union in serially processing grievances to obtain union time which should not be delayed or denied without reasonable reason and explanation. While the large back log of grievances in this office is caused in part by the Employer's failure to meet with the Union on those grievances, it is also caused in significant part by the failure to provide union time, as indicated by the sheer volume of grievances on this subject. The two work hand in hand. Union time must be granted to not only investigate, but to process grievances including meetings with Employer representatives at the Informal and Formal A Steps. As the Union notes, the inability to either resolve or move grievances forward additionally causes harm to the members whose contractual rights may be denied or delayed. This delay in processing grievances additionally makes the Union appear to be ineffectual or inept in the eyes of its members. Further, the evidence demonstrated that the Union has devoted a significant amount of Branch personnel time to attempting to process and resolve grievances on this issue. These are all costs which result

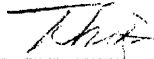
directly from the repeated nature of this issue in this office.

The parties here have acknowledged the propriety of a monetary payment in the event of continued and egregious violations, and in fact have incorporated such awards into numerous settlements on the issue of denial or delay of union time. Two separate B Team decisions in 2015 have additionally acknowledged the appropriateness of such a compensatory award. In this case, while it is hoped that an escalation of the monetary award will encourage management to comply with Article 17.3, the substantial increase sought by the Union does not appear to be warranted. It is noted that this is the first arbitration in this office on this subject. Thus, while an increase in the monetary remedy is appropriate in order to impress upon local management the gravity of their continued violation, an increase to the degree proposed by the Union does not appear to be warranted.

AWARD

The Grievance is sustained in part. The parties' agreement that union time requests may not be delayed is unenforceable under the National Agreement. The Employer is directed to grant union time as requested unless a delay is reasonable in the circumstances presented by each particular request and after discussion with the steward to determine an alternative time. The Union shall be paid the sum of \$150.00 as compensation for the need for the processing of repeated grievances on this issue and to impress upon the Employer the need for compliance with Article 17.3.

Dated: April 5, 2017



Tobie Braverman, Arbitrator