

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration *
*
between: * Grievant: C. Gesell
*
United States Postal Service * Post Office: Frederick, MD
*
and * USPS Case No: K11N-4K-C 17183206
*
National Association of * NALC Case No: 01-16-LH-240
Letter Carriers, AFL,CIO *

BEFORE: Lawrence Roberts, Arbitrator

APPEARANCES:

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

For the Union: Alton Branson

Place of Hearing: Postal Facility, Frederick, MD

Date of Hearing: May 16, 2017

Date of Award: June 11, 2017

Relevant Contract Provision: Article 15

Contract Year: 2011

Type of Grievance: Contract

Award Summary:

This dispute involves the Union's alleged non-compliance of a previous Step A resolution. The overwhelming evidence only certified the initial allegations made by the Union. The Employer failed to offer any well founded reasoning to explain their failure in complying with the language of that particular settlement agreement. Therefore the instant grievance is sustained and the Union's requested remedy is granted.



Lawrence Roberts, Panel Arbitrator

SUBMISSION:

This matter came to be arbitrated pursuant to the terms of the Wage Agreement between United States Postal Service and the National Association of Letter Carriers Union, AFL-CIO, the Parties having failed to resolve this matter prior to the arbitral proceedings. The hearing in this cause was conducted on 16 May 2017 at the postal facility located in Frederick, MD. Testimony and evidence were received from both parties. A transcriber was not used. The Arbitrator made a record of the hearing by use of a digital recorder and personal notes. The Arbitrator is assigned to the Regular Regional Arbitration Panel in accordance with the Wage Agreement.

OPINION

BACKGROUND AND FACTS:

This is a grievance involving a Letter Carrier working at a Frederick, MD postal facility.

The issue in this case involves an alleged Article 15 violation. The Union insists the Employer failed to abide by a Formal Step A resolution signed by the local Parties on or about 18 February 2016.

The above mentioned resolution, in pertinent part, reads as follows:

"Cease and Desist, pay Grievant Catrina Gesell .20 digits at 50 percent of her hourly wage. Per section 8.5.G of the Joint Contract Administration Manual: Catrina Gesell, EIN: XXXXXXXXX .20 \$2.70 Documentation will be provided within one (1) pay period from this settled case to the Union. Payment to grievant will be completed within one (1) pay

period to Catrina Gesell. Future violations of this nature could result in escalating remedies."

The Union requests a cease and desist order as well as an escalating monetary remedy and award. Conversely, the Agency insists the monetary amount is nominal and an escalating remedy, in consideration of all the facts in this case, is inappropriate.

The record indicates the Step B Team reached an impasse on 13 October 2016. The matter is now before the undersigned for final determination.

At the hearing, the Parties were afforded a fair and full opportunity to present evidence, examine and cross examine witnesses. Oral closing arguments were made by the respective Advocates and the record was then closed.

JOINT EXHIBITS:

1. Agreement between the National Association of Letter Carriers Union, AFL-CIO and the US Postal Service.
2. Grievance Package

UNION'S POSITION:

The Union contends that Management failed to comply with the settlement and as of today's date, the Union has not been

provided the evidence showing that the pay adjustment was ever processed as promised.

As noted by the Union, in reviewing the case file, it overlooked the payment date cited in the remedy as June 24, 2016 on page 19 of Joint Exhibit 2. According to the Union Advocate, the pay adjustment relied upon in that remedy request was not for the Grievant, but that of another employee.

The Union alleges that Management has failed in making a timely pay adjustment. The Union predicts Management's position will be that money owed to the Grievant is only a de-minimis amount. It is the claim of the Union the Employer will argue this grievance is only an attempt to gain self-enrichment.

Instead, according to the Union, it's important for Management to comply with all grievance settlements.

The Union relies on a signed settlement between the Postmaster and the Union agreeing to have the money in hands of the Union or employees within twenty eight days.

The Union insists this case is about the basic principle of complying with our contract and signed grievance settlements.

Accordingly, the Union would like to make one thing very clear from the onset of this hearing, the remedy sought by the Union is not punitive as Management would like the Arbitrator to believe, instead, a compensatory remedy seeking contract compliance.

It is the Union's position that the remedy should be granted due to the continuous violations of not making timely pay adjustments in the past and present.

The Union argues the Parties at the National Level have agreed to remedies where the record is clear in circumstances where the violation is egregious or deliberate or after local Management has received previous instructional resolution on the same issue and it appears that a "cease and desists" remedy has not been sufficient to ensure future contract compliance.

The Union asks its requested remedy be granted, that being, that Management be ordered to cease and desist from making untimely pay adjustment and pay the Grievant \$20.00 per calendar day from March 18th - June 24, 2016 for a total of ninety nine days and pay Local Branch 3825 a lump sum of fifteen hundred dollars (\$1500) seeking contract compliance for having to file this dispute again due to Management's unwillingness to process the grievance settlement in a timely manner.

COMPANY'S POSITION:

The Service insists the Union, in this matter, is attempting to add language to the Parties Agreement. It is the claim of the Employer does not pay a settlement in a timely manner, the Employee can request a salary advance.

According to the Agency, the Union would like to make their own rules and regulations. Management insists this case is simply about the Local Union making money. It is the opinion of the Agency that an escalating remedy is improper.

The Employer also notes that while the case file contains nine or ten arbitration awards from Rockville, MD, however, this particular matter is in Frederick, MD.

Management insists the Frederick operation does not have a history of such violations.

The Employer insists the Union is asking for remedies that are not contractual. Furthermore, the Agency asserts the Union has failed to show any harm in this case.

It is Management's claim they are doing everything in their power to pay grievance settlements in a timely manner, albeit, clearing the docket.

In the Employer's opinion, the Service is paying the Union at Steps One and Two of the grievance procedure to create their files. The Employer Advocate believes this is throwing money away. The Service claims that an award to the local union is punitive and not permitted by the Parties Agreement. The Agency insists there is no money lost by the local and this remedy is a money making scheme for them. The Employer reiterates that position by citing examples found in the case file.

Management relies on the language of Article 41.3.G in support of their position in this matter. The Employer asserts the Union has included numerous Step B Decisions in an attempt to cloud the issue, whereby, some are irrelevant to this case and others found no violations at all.

The Employer insists the payment in this case was made on June 24, 2015, and this is a very important date to this case. The Grievant, according to the Employer was paid the amount owed.

It is Management's position the Union's burden of proof must show harm between the harmed party and the requested remedy.

Management asserts that the Informal Step A does not make mention of payment to any Union branch.

The Agency insists the Union's requested remedy is unwarranted in this instance.

Management argues there is no language in this Agreement that would support the Union's requested remedy.

It is the position of the Employer that the Union's requested remedy is only a form of punishment on the Employer. The Employer Advocate again mentions the Union is already being paid by Management to process the grievance.

The Employer insists the Union's request for a monetary remedy is punitive and arbitrary. The Service insists the Union has failed to prove repeated, deliberate and egregious failure on the part of management in making payment in this Frederick Installation.

It is the assertion of the Employer that the Union is taking advantage of the situation in this Frederick Installation. The Employer Advocate insists that management personnel at this Frederick Installation are being properly trained.

The Service notes that many arbitrators have ruled that punitive damages are inappropriate for any breach of contract. It is the argument of the Employer that only blatant or malicious violations are deserving of a punitive award.

According to the Employer Advocate, there is no specific remedy for this type of violation. Furthermore, the Agency insists there is no language that would grant the Union an escalating form of compensation.

It is the position of the Employer that the Union is attempting to obtain a remedy in arbitration that is not available via the National Agreement.

The Employer Advocate states that he does not expect this arbitrator to author a contract or write language for this particular Frederick Local. It is the position of the Employer there is no language in the contract that addresses what happens if the Grievant is not paid by the agreed upon settlement date.

The Service contends this grievance was filed after compliance was made. Management alleges the Union became aware

that, according to the Employer Advocate, that one grievance got through and we need to go back and collect on that one.

According to Management, all the payments in this office have been made. The Employer Advocate stated the Postal Service has paid out enough already and the deficiencies have been corrected.

Management asks that this game be stopped. The Employer claims this Local Union is a money making machine.

The Employer asks that a decision in this matter be rendered in favor of the Postal Service.

THE ISSUE:

Did Management violate, but not limited to, Article 15 of the National Agreement when they failed to abide by Formal Step A Resolution #01-16-LH100, and if so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS:

**ARTICLE 15
GRIEVANCE-ARBITRATION PROCEDURE**

DISCUSSION AND FINDINGS:

As a preliminary matter, the Employer, during their opening statement, introduced contractual language of both the American Postal Workers Union, as well as the Mail Handlers Agreement. Management insisted the language is applicable in this case. The Union raised an objection to the admission of that respective language. I accepted the documentation for what it was worth at that time.

As I have stated in many past Decisions, at the time of the hearing, I offer both Parties a very broad spectrum in which evidence can be introduced and accepted into evidence. During the process of any arbitration hearing, my focused goal is to gain as much information regarding the dispute as possible, then compare the relevancy of all of that to the language of the particular Agreement. Through the course of any hearing, I do not have, at any given moment, a full and complete understanding of all the facts, relevant evidence and arguments until the hearing has concluded. For that reasoning, my acceptance of evidence, into the record is broad. Unless it is obvious at the onset that certain evidence, argument or documentation be excluded, the same is generally accepted and its probative value considered and weighed accordingly. To exclude evidence from either party, prior to my full and complete understanding of the dispute would simply be a disservice to both of the Parties.

With that in mind, it was clear the language from the other Agreements, as offered for consideration by the Employer over the objection of the Union was not a part of my consideration in this matter. The language referenced by the Employer is not a part of the Service's Agreement with the National Association of Letter Carriers. The end result found merit in the Union's initial objection and for that reasoning, that documentation and

its accompanying argument was not considered as part of this record.

The Formal Step A Resolution at issue involves a small amount of money, \$2.70. And I agree with the Employer argument that such an amount is de-minimis in nature. However, that same "Resolution" also provides that "Documentation will be provided within one (1) pay period from this settled case to the Union. Payment to grievant will be completed within one (1) pay period. Future violations of this nature could result in escalating remedies."

The overwhelming evidence in this case proves that a violation of Employer non-compliance with an agreed upon settlement had occurred. In my view, proven non-compliance, regardless of subject matter, is a clear Article 15 violation and the same should be pursued by the Union.

The Employer argued the Union only pursued this matter as retribution. However, in my view, the raising of a legitimate issue regarding non-compliance, regardless of its monetary value, is certainly a serious matter. Payment should have been made to the Grievant and the Union should have been duly notified. A Union Steward testified that the documentation mentioned in the settlement was not received by the Union.

While there was contradictory testimony to that end, I was not convinced the Union was notified of a timely payment being made to the Grievant. There was also a disagreement between the Parties regarding whether or not the Grievant had yet received reimbursement at the time of the hearing. While the Grievant was not present at the hearing, I was not convinced that payment had already occurred.

The Employer Advocate was very animated about the grievance processing at this facility. I can understand the frustration. And as the Advocate stated, this Arbitrator cannot add to, change or modify the language of the Parties Agreement. And regardless of what has happened at this facility in the past, the language of this Agreement remains intact.

I can also understand that some of the Advocates may have been novices in the administrative procedures. And that may very well have caused some confusion and misunderstandings. Nonetheless, the Parties Agreement is not a variable. Instead, most of the language is straightforward. And one of the unspoken terms of any agreement is that of reasonableness on the part of all. That is one of those terms that are not negotiated, instead, evenly applied across all of the Articles and Sections of any Wage Agreement.

That reasonableness mandate applies to grievance settlements. The issue in this case is not resolved by unambiguous language written into any Article 15 article or section, instead, relies totally on a matter of reasonableness.

And in my considered opinion, any monetary settlement to any grievance should be made no later than the second pay period following settlement. It lacks any well founded reasoning that such an administrative process could not be processed in such a time frame. In my view, there must be a management process in place to assure that such timely payments take place. While I understand there may be exceptions, any extension beyond that time frame should be rare in occurrence.

The evidence in this case clearly illustrates the Employer's failure to disburse monetary settlements in a timely manner, while at the same time providing written confirmation of the same to the Union. While Management insisted the timely payment of grievances was more akin to a Rockville facility instead of Frederick, the Union cited a plethora of instances where either late payments occurred or the Union was not notified that payments had been made.

And given the number of similar grievances and settlements, I am of the opinion that a punitive award is appropriate in this

case. In fact, I am convinced that a punitive award is the only preventative measure to curb future violations. And the Parties themselves agreed to an escalating remedy for such future violations.

Management argues that a punitive award is inappropriate. Furthermore, the Agency insists a punitive award is prohibited by the Parties Agreement. In this particular case, I disagree. Article 15 lacks any language to that end. And the Union's evidence showing a repetitive violation is overwhelming. In fact, the settlement statement at issue specifically states that **"Future violations of this nature could result in escalating remedies."** A consistency of non-compliance, as evidenced by the Union in this case, clearly equates to bad faith bargaining on the part of the Employer in this case. And bad faith bargaining cannot be condoned, regardless of reasoning.

And for that reasoning the Union's Formal Step A requested remedy will be granted.

Management is ordered to cease and desist from making untimely pay adjustment and pay the Grievant \$20.00 per calendar day from March 18th - June 24, 2016 for a total of ninety nine days and pay Local Branch 3825 a lump sum of fifteen hundred dollars (\$1500) seeking contract compliance for having to file

this dispute again due to Management's unwillingness to process the grievance settlement in a timely manner.

As a final note I would like to respond to Management's comment that "In the Employer's opinion, the Service is paying the Union at Steps One and Two of the grievance procedure to create their files." The record shows the Union steward spent countless hours creating spreadsheets to track the numerous incidents that have occurred and I do not believe the USPS paid for all her time spent.

AWARD

The grievance is sustained.

Dated: June 11, 2017
Fayette County PA