

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration *

between: *

United States Postal Service *

and *

National Association of
Letter Carriers, AFL, CIO *

Grievant: Class Action

Post Office: Damascus, MD

USPS Case No: K11N-4K-C 17310015

NALC Case No: 7216TAP06

BEFORE:

Lawrence Roberts, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Jamelle Wood

For the Union: Alton Branson

Place of Hearing: Postal Facility, Damascus, MD

Date of Hearing: April 18, 2017

Date of Award: May 13, 2017

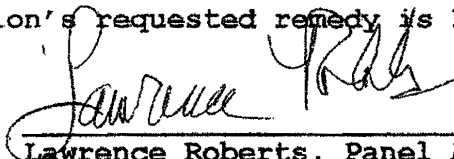
Relevant Contract Provision: Article 15

Contract Year: 2011

Type of Grievance: Contract

Award Summary:

The instant grievance arose when local Management failed to participate in a Formal Step A meeting. The Employer made several arguments discounting the Union's position, including that "sometimes things just happen." All of management's arguments and contentions were silenced by their failure to participate in Article 15 Formal Step A of the Parties Grievance-Arbitration Procedure. The grievance is sustained and the Union's requested remedy is hereby 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 18 April 2017 at the postal facility located in Damascus, 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 tape 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 class action grievance filed on behalf of the Letter Carrier Craft working at Damascus MD postal facility. The matter arose when the Employer allegedly failed to meet at the Formal Step A of the Parties Article 15 Grievance-Arbitration Procedure.

More specifically, the Union alleges that Management failed to show up for a mutually agreed Formal Step A meeting following their receipt of the appeal by mail. The Union further claims that Management failed to contact the NALC Formal Step A Representative afterward.

Citing previous violations, the Union requests a monetary remedy in addition to a cease and desist order. While the Agency admits their non-participation in a Formal Step A

meeting, they insist that any monetary award is inappropriate. Furthermore, the Employer insists that res judicata applies to this instant case in that, this matter was settled by a previous Step B Decision.

It was found the matter was properly processed through the prior steps of the Parties Grievance-Arbitration Procedure of Article 15, without resolve. The Step B Team reached an impasse on 22 December 2016. Therefore, 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. The record was closed following the submission of oral closing arguments by the respective Advocates.

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:

In their opinion, the Union will prove they did everything in accordance with the National Agreement when the case was appealed to the Formal Step to be heard and more, yet Management failed to meet with the Union's Formal Step A Representative.

The Union views this violation as a repetitive contractual violation and do deem this to be an egregious violation after the supervisor had received proper notification of the appeal.

From the Union's perspective the evidence will prove that this was a very serious breach of our collective bargaining agreement. As implied by the Union the actions of the supervisor were deliberate and egregious.

The Union also notes that because Management failed to meet with the Union Representative, they also failed to provide any contentions to support their position. Additionally, the Union also asserts that Management also failed to provide any supporting evidence or documentation at both the Informal and the Formal Step of the grievance process.

In that light, the Union ask that no weight be provided to the position taken by the Management Step B Representative.

It is the Union's position that Management gave up its contractual rights to present a case against the Union here today because they failed to do so at the Informal and Formal steps of the grievance process.

The Union also believes that due to the fact that there was no position put forth by Management at the Informal and Formal Step, the Step B Representative cannot put forth any additional arguments. The Union also argues the Employer position cannot be considered as it becomes new information and argument put forth for the first time in arbitration.

Lastly the Union would also note that by not providing any contentions or evidence in the case file to support their position, Management has not taken a position with regards to the Union's case or requested remedy.

As a settlement, the Union requests a compensatory remedy seeking contractual compliance. To that end, the Union requests that Management pay NALC Local Branch 3825 a lump sum of three hundred dollars (\$300) for Management's failure to meet at the Formal Step A of the Dispute Resolution Process as well as a cease and desist order for failing to comply with Article 15 and their obligation to meet at Step A of the dispute Resolution process.

COMPANY'S POSITION:

The Employer initially raises an arbitrability issue based on the doctrine of res judicata. It is Management's claim that this instant grievance is asking for a resolution of an issue that has been previously settled via another Step B Decision labeled K11N-4K-C 17102742.

The Agency insists this matter has already been settled and cannot be re-litigated.

Regarding the merits, it is Management's position that many of the previous instances regarding failure to meet occurred some ten (10) years ago.

The Employer acknowledges the failure to meet was a previous issue, however, currently, the same is not a major issue at the Damascus facility. The Postal Service is aware of this arbitrator's previous rulings regarding this very subject. But with that in mind, the Service asks the arbitrator to review the facts of this specific case.

It is the assertion of the Employer this case is not an egregious overstep and certainly does not equate to the three-hundred-dollar remedy requested by the Union.

Management argues there was no methodology as to how the Union came up with such a random dollar amount.

It is the Agency's position today to focus back on what the Parties Agreement has already told us. According to the Joint Contract Administration Manual, the Employer insists that very specific instructions are given when talking about what happens when we fail to meet.

The Service insists the National Agreement was agreed to by both Parties and those same Parties recognize the fact that sometimes these things happen. And with that, it is the assertion of Management that those same Parties have also agreed to a remedy when these things happen.

And in this case, the remedy is that the Union move forward with the case at hand. The Agency insists that when monetary remedies are added to matters that have already been decided, it changes as to how we position ourselves in the procedure.

The Agency suggests this Local Union uses a case such as this to boast and brag about what they are doing to the Postal Service. Instead, the Employer suggests the Union should respect the language of the Parties Agreement in attempting to settle differences. The Employer asks this Arbitrator to visit the Local Union's website to view the boasting and bragging previously mentioned.

It is Management's position that yes, while there has been trouble in certain instances, such occurrences were at a different time and under a different Postmaster.

Management claims there is no evidence in this case that would illustrate any egregious actions were committed by the Employer in any instance. The Employer insists there is no egregious violation in this instant case.

The Employer does not disagree with the Union's claim of what happened, instead, insists the Agreement provides a clear direction as to what happens when the Parties fail to meet.

Management mentions the other cases placed into this file by the Union have nothing to do with the Damascus facility.

The Employer Advocate insists that sometimes the failure to meet just happens and in this particular case, it was just a single occurrence.

It is pointed out by the Advocate that Management is fully aware of the language of Article 15.2. However, Management also mentions that the negotiating Parties also realized that certain situations do occur and both Parties at the National Level agree to the language of Article 15.3.

The Agency insists this case today is certainly not deserving of any sort of monetary remedy. It is the position of the Postal Service that the instant file does not equate to a three hundred dollar penalty.

The Agency requests the grievance and the requested remedy be denied in its entirety.

THE ISSUE:

Did Management violate Articles 15 of the National Agreement when grievance #72-16-TAP06 was appealed to Formal Step A and Management failed to appear for a Formal A Meeting? If so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS:

ARTICLE 15
GRIEVANCE-ARBITRATION PROCEDURE

DISCUSSION AND FINDINGS

Initially, the Employer introduced a procedural argument based on the doctrine of res judicata. Management's procedural foundation was based on the following language of a previous Step B Decision, styled 72-16-TAP04, dated 24 October 2016, wherein the pertinent part of that Decision reads:

"... The Team agrees that Management failed to properly meet under Article 15. Management shall adhere to the relevant provisions of Article 15 regarding meeting at Formal Step A in order to preclude future similar violation. Future documented failures to meet may be subject to additional remedies."

I disagree with the Employer's procedural assertion in this matter. Primary is the fact the Employer failed to raise such a contention earlier in the Procedure, namely at the Formal Step A meeting. It was obvious the Employer did not participate at that Step. And secondly, the last sentence of that settlement, mentioned above allows for additional remedies.

The Union is correct in their contention the remainder of the Employer's opening statement is new argument. In my view, the Employer should have first entered such an argument at the Formal Step A of this particular grievance. Instead, as the Union again correctly pointed out, the Employer failed to

participate or for that matter, make any effort to reschedule that Formal A Meeting.

Furthermore, the Union is also correct in pointing out that, at Step B, only additions and corrections to the record can be made. Without an existing record in the first place, there is absolutely no room to make any additional arguments or corrections. The Employer position, presented in their opening statement, becomes new argument and is therefore rejected in its entirety for that reasoning.

As I have stated in many of my prior Decisions, the language of Article 15.2 Formal Step A (d) is absolute. The placing of the word "**shall**" in Paragraph d makes the language mandatory instead of optional. This language requires both Parties to "**make a full and detailed statement of the facts.**" Article 15.2 Step B allows for "**additional facts and contentions,**" however, the language makes it clear that any additional facts and contentions are to be merely a supplement to that full and detailed statement required at the Formal A. And either Party that fails to abide by the directive of that Formal Step A language is at a clear disadvantage in any case. Nonetheless, the moving Party, regardless of circumstance, is required to meet that contractual burden of proof requirement.

However, even though the Employer fails to participate and present a position, the particular grievance does not automatically default in the Union's favor. Instead, the Union, being the moving Party, is still required to meet the required burden of proof. And in this matter, I am of the considered opinion the Union has overwhelmingly and convincingly met that requisite requirement.

I was not convinced the Employer's failure to participate in this instant case was egregious, yet, it was quite clearly deliberate in nature. It was obvious to me the Employer was aware of the Union's intent to schedule the Formal A Meeting. I was also convinced the Employer simply failed to offer any type of reply to the Union concerning that Formal A Meeting. And such an action can be labeled as nothing other than deliberate and intentional.

There is absolutely no valid reason for either Party to simply fail to participate at the Formal Step A Meeting. I understand that animosity sometimes exists between certain advocates and/or that oftentimes it is virtually impossible to sync two different calendars for various reasons. However, in that same light, the virtual majority of cases that I've decided have some sort of mutual agreement to extend the time limits within the record.

The language of Article 15.3.b simply moves the grievance forward should the Employer fail to participate in any of the Steps, including Formal Step A. However, the failure by the Employer to participate in that Formal Step A also bars them from presenting any future argument or contention in that Article 15 process. And to some degree, I would hope this would encourage Employer participation. I have yet to experience a matter wherein the Employer failed to present Formal Step A arguments and contentions yet remained successful in the final outcome of that particular case.

And in this matter, the Employer failure to present a Formal Step A argument or contention mutes any argument made by the same at arbitration.

This record contains a list of previous settlements, dated 2008 and 2009, relating to similar issues. And those previous settlements have had little impact on my decision in this matter. Instead, it does prove this issue was absent between the Parties herein for a period of years. But what does have an impact in my decision is the last sentence in the more recent Step B Decision previously cited above. The Parties therein agreed that **"future documented failures to meet may be subject to additional remedies."**

And in this case, the Union presented evidence that would certainly be subject to such a remedy. More importantly the Employer failed to offer any opposition via their elected absence from the Formal Step A process. And paramount, the Union's requested remedy is only considered reasonable.

I was convinced that an old issue of conflict between these local Parties has again resurfaced. The Decision written by the Step B Team cited above is reasonable and in accord with the Parties Agreement. And with that in mind, I see no reason not to characterize this instant dispute as a "**future documented failure**" that deserves additional remedies for the purpose of ensuring compliance hereinafter into the future.

The Union's requested remedy will be granted in full. Additionally, I believe a clear explanation as to the meaning and intent of a cease and desist order would be beneficial to the Parties. It means stop. It means immediately. It means to cease from the same action hereinafter into the future, without excuse. Compliance with this order is mandatory.

The case file indicates this violation was not an isolated occurrence. The incident date of the instant grievance was 5 October 2016. A previous Step B Decision found in Joint Exhibit 2, indicates an incident date of 9 September 2016

wherein the Employer failed to meet at Formal Step A. This record also indicates the Employer bypassed another Formal Step A Meeting, relating to an entirely different issue on a dispute initiated on or about 6 August 2016.

In closing, I would feel remiss leaving this discussion without mentioning a comment made by the Employer Advocate. When referencing the Employer's failure to meet with the Union at Formal Step A, the Employer Advocate stated that "**sometimes these things happen.**" I disagree. The Parties herein have engaged in a written Wage Agreement. The entire purpose of Article 15 is to engage both Parties toward a resolution of any conflict at the earliest practical time. There is absolutely no excuse for a violation of this particular Section. Participation at Article 15.2 Formal Step A (d) is mandatory. This is also reinforced by the language of Article 15.3.C whereby the Parties are provided an option to mutually agree to an extension period of the time limits.

This is a clear directive of the Parties Agreement and is therefore compulsory, albeit without any other option. A full and detained exchange of facts, arguments and contentions by the respective Parties must be mutually exchanged at this Formal Step A meeting. If not done so, the non participant relinquishes their right to make any argument forward in the process.

And when this language is habitually disregarded, the remedy must escalate proportionally to encourage future compliance. Habitual in this case is based on the recent history of those Step B Decisions previously mentioned. The Employer may insist that such a remedy seems somewhat punitive, however, in that same breath, their failure to follow unambiguous language may seem as punitive to the opposing party as well.

The Union's requested remedy is hereby granted in its entirety. Management shall pay NALC Local Branch 3825 a lump sum of three hundred dollars (\$300) for Management's failure to meet at the Formal Step A of the Dispute Resolution Process. Management at this Damascus facility is hereby ordered to cease and desist from any similar violations hereinafter into the future. Any further violations should result in an escalated monetary award.

AWARD

The grievance is sustained in its entirety.

Dated: May 13, 2017
Fayette County PA

