

**REGULAR ARBITRATION PANEL**

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In the Matter of Arbitration )  
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Between )  
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United States Postal Service )  
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And )  
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National Association of Letter )  
Carriers, AFL-CIO )  
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Grievant: CLASS ACTION  
  
Post Office: Rockville  
GATS Case No. 4B-19N-4B-C-21490784  
NALC Case No. 50-21-SL-92  
  
NALC DRT Case No. 13-584941

BEFORE: Sarah Miller Espinosa, Arbitrator

APPEARANCES:

For the Union: Alton R. Branson, Advocate, Region 13, NALC  
For the U.S. Postal Service: Anthony W. Standley, Labor Relations Specialist Senior  
Place of Hearing: 500 North Washington St. Rockville, MD 20850

Date of Hearing: February 27, 2024  
Record Closed: February 27, 2024  
Date of Award: April 1, 2024  
Relevant Contract Provisions: Article 15  
Contract Year: 2019-2023  
Type of Grievance: Contract

AWARD SUMMARY

There is no dispute between the parties that the Grievant was entitled to 80 hours of pay per a voluntary grievance settlement or that the payment was made approximately 3 months late. The only dispute in this matter concerns what, if any, remedy is appropriate for the Postal Service’s failure to meet its obligation. This violation occurs within the context of a history of management failures to comply with settlements. Mistakes in processing (or failing to process) the payment were within the sole control of management and do not excuse the obligation. Given the harm suffered by the Grievant and the Union, the Postal Service is ordered to pay the Grievant interest on the amount owed and a lump sum payment of \$600, to pay the Union Branch 3825 a lump sum payment of \$1500, and to cease and desist from its failure to timely comply with grievance settlements.



Sarah Miller Espinosa, J.D.

## **I. ISSUE**

At the hearing, the parties stipulated to the following issue:

Did Management violate, but not limited to, Article 15 Section 1 of the National Agreement and page 15-8 of the July 2014 edition of the JCAM and all the arbitrations, Pre-Arbs, precedent setting Step B's and other grievance resolutions when management failed to pay timely (money in hand within 28 days, which in this case would have been by May 18, 2021) on an Informal Step A Decision dated April 19, 2021? If so what is the appropriate remedy?<sup>1</sup>

## **II. RELEVANT PROVISIONS OF THE 2019-2023 NATIONAL AGREEMENT**

(Jt. Ex. 1)

### **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.

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### **ARTICLE 19 HANDBOOKS AND MANUALS**

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

Notice of such proposed changes that directly relate to wages, hours, or working conditions will be furnished to the Union at the national level at least sixty (60) days prior to issuance. At the request of the Union, the parties shall meet concerning such changes. If the Union, after the meeting, believes the proposed changes violate the National Agreement (including this Article), it may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be

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<sup>1</sup> There was no agreement on the issue prior to hearing. The Postal Service agreed to the issue proposed by the Union at Step B at the hearing.

furnished the Union upon issuance.

Article 19 shall apply in that those parts of all handbooks, manuals and published regulations of the Postal Service, which directly relate to wages, hours or working conditions shall apply to CCA employees only to the extent consistent with other rights and characteristics of CCA employees provided for in this Agreement. The Employer shall have the right to make changes to handbooks, manuals and published regulations as they relate to CCA employees pursuant to the same standards and procedures found in Article 19 of the National Agreement.

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**III. RELEVANT PROVISIONS OF THE JOINT CONTRACT ADMINISTRATION  
MANUAL (JCAM) (JULY 2014)**

(Jt. Ex. 3)

**ARTICLE 15 GRIEVANCE-ARBITRATION PROCEDURE**

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**15.2 (c) Step B**

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**Step B Decision.** The Dispute Resolution Team must make a decision within fourteen calendar days after receipt of the appeal from Formal Step A, unless this time limit is mutually extended. The written Step B decision must state the reasons for the decision in detail and include a statement of any additional facts or contentions not set forth in the grievance as appealed from Formal Step A. The Step B team must attach to the decision a list of all documents included in the file.

A Step B decision establishes precedent only in the installation from which the grievance arose. For this purpose, precedent means that the decision is relied upon in dealing with subsequent similar cases to avoid the repetition of disputes on similar issues that have been previously decided in that installation.

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**IV. BACKGROUND**

Pursuant to the collective bargaining agreement (“CBA”) between the National Association of Letter Carriers, AFL-CIO, (“Union” or “NALC”) and the United States Postal Service (“Management” or “Employer” or “Postal Service”), the parties designated Sarah Miller Espinosa to serve as arbitrator to resolve certain issues. The parties presented evidence and arguments on February 27, 2024. The grievant and the Union were represented by an advocate selected by the Union. The Postal Service was represented by an advocate selected by the Postal Service. The hearing was held at a postal facility in Rockville, Maryland. The following witnesses were called to testify by the Union: Kristopher Velez (“Grievant”), City Carrier Sergio Lemus (“Lemus”), Informal Step A Representative, and Ken Lerch (“Lerch”), President, Branch 3825, Rockville. The following witness was called to testify by the Postal Service: Dewan Pinthiere (“Pinthiere”), Formal A Representative. The record was closed at the conclusion of the hearing. In making the determinations set forth in this Decision and Award, the Arbitrator considered all of the evidence and arguments made by both parties. The Arbitrator, however,

may not have repeated every item of documentary evidence, nor may she have repeated completely all of the arguments presented.

## **V. FACTS**

The Grievant was employed as a City Carrier Assistant beginning on or around December 19, 2019, in Rockville, Maryland. In late December 2020 and/or early January 2021, the Grievant became sick after contracting COVID-19 and was denied paid leave (Local Grievance No. 50-21-SL18). The Grievant testified that the loss of pay was a hardship for him and his family, as he had recently relocated from Puerto Rico, had a three-month old child, and was forced to make difficult decisions about whether to pay his rent or his car payment. The Grievant testified that he contacted the lender and was able to move three months of car payments to the end of the loan term, which was originally 72 months. The Grievant further testified that he borrowed money from his family during this time, money which, the Grievant testified, he has since repaid.

The Union filed a grievance, which was resolved by mutual agreement of the parties at Informal Step A on or about April 19, 2021. The resolution required the Grievant be paid the equivalent of 80 hours. There were individuals in acting positions and changes in management personnel in Rockville and the management officials responsible for processing the payment failed to do so. As of June 5, 2021, the Grievant had not received payment for the 80 hours specified in the resolution of the grievance at Informal Step A and the Union filed another grievance, alleging the money “should have been in [Grievant’s] hands by May 18, 2021” per the 28-day money-in-hand agreement in effect at the Rockville facility. (Jt. Ex. 2).

The grievance was appealed to Formal A on or about June 1, 2021. At this time, Pinthiere, the Formal Step A Representative, began to investigate whether and why the 80 hours had not been paid. Pinthiere discovered that two managers mistakenly believed the other would process the paperwork and no request to Eagan (the facility which processes such payments) was made. On or about June 11, 2021, Pinthiere filed a PS Form 2240 with Eagan, requesting the Grievant be paid for 80 hours. On or about June 25, 2021, Pinthiere received notice that the form submitted to Eagan was incorrect and that PS Forms 8038 and 8029 were required instead of PS Form 2240. Pinthiere sent Forms 8038 and 8039 to District Labor on or about July 16, 2021. Pinthiere sent the forms without the Grievant’s signature, in a manner similar to how she had proceeded without incident in the past. On or about August 13, 2021, Pinthiere received an email from District Labor indicating the payment could not be processed without the employee’s signature. Pinthiere requested and received the Grievant’s signature on the appropriate form on or about August 14, 2021. Eagan processed the forms and the Grievant was paid.

The remedy requested was:

that management comply with ... all aspects of the Informal Step A Resolution 50-21-SL18 signed 4-19-2021 and pay [Grievant] \$20.00 per calendar day from May 18, 2021 until the date he receives his money (grievance settlement) in hand. Also, the Union is requesting that the Union be paid a lump sum of \$1,500.00 to be paid to NALC Branch 3825. This is an escalating remedy and is completely justified by the documentation in this case file. This is not a punitive remedy; the remedy is designed to attain contract compliance and with the hundreds and hundreds of prior settlements, including five arbitrations in the City of Rockville, the remedy is completely reasonable.

(Jt. Ex. 2). The grievance was denied and the Union appealed the grievance to Step B. The Step B Decision of “Impasse” was issued on or about October 6, 2022. In addition to disputing its obligation to ensure settlements at Rockville are required to be processed so that the grievant has the money in hand within 28 days, the Postal Service also asserted the Union’s requested remedy of \$20 per day to the Grievant and \$1500 to the Local was unjustified and punitive. After the Step B team declared an impasse, the Union appealed the grievance to arbitration. (Jt. Ex. 2).

## **VI. UNION’S CONTENTIONS**

The Union contends that management has engaged in a pattern of unacceptable behavior by failing to make timely payments after settlements and forcing the Union to file multiple grievances. The Union avers this is bad faith bargaining on the part of USPS. The Union points to the March 24, 2016 arbitration award issued by Arbitrator Braverman, which the Union asserts is identical to the instant matter. The Union asserts that Arbitrator Braverman ordered the Employer “to take all necessary steps to [ensure] that future pay adjustments are paid within twenty-eight days of grievance settlements” and that the Employer has again failed to do so. The Union asserts that the delay in pay adjustments is because of management’s willful delay in submitting the adjustments to Eagan for processing and that none of the delay is as a result of Eagan’s processes. The Union highlights the harm the delay had on the Grievant, as shared during the Grievant’s credible testimony. The Union avers that it has met its burden and requests the Arbitrator sustain the grievance. As remedy, the Union requests

Management pay [the Grievant] twenty (\$20.00) dollars for each calendar day beyond the 28<sup>th</sup> day, which would have been May 18, 2021, until he received the pay adjustment, and pay NALC local Branch 3825 a lump sum of one thousand five hundred (\$1,500.00) dollars due to the repetitive violation and having to file continuous grievances on the same issue that have been resolved many times over. And anything else deemed appropriate by the Arbitrator.

## **VII. MANAGEMENT’S CONTENTIONS**

The Postal Service asserts that management was not willful in the delay of payment. The Postal Service argues that mistakes happen and processes sometimes fail, as they did here. The Postal Service contends that it made every effort to pay the Grievant expeditiously and that there is no justification for

the \$20 per day penalty the Union seeks. In support of its position, the Postal Service asserts that the Grievant testified he paid everyone he owed money back and there is a lack of proof to support any additional payments. The Postal Service further argues that there is no harm to the Union and cites arbitration awards that establish remedies must be compensatory, not punitive. The Postal Service asserts that, at best, the Grievant may seek interest for the time period between May 18 and when the payment for the 80 hours was actually made in August. The Postal Service avers that there are no recent arbitration awards that support the Union's position, there is no evidence on which to conclude the Grievant was harmed as he has been fairly compensated, and any further remedy ordered would not draw its essence from the collective bargaining agreement. The Postal Service, therefore, requests the grievance be denied.

### **VIII. DISCUSSION**

There is no dispute that the Grievant was entitled to 80 hours of pay per the grievant settlement. At hearing, the Postal Service did not dispute that the payment should have been received by the Grievant within 28 days, on or before May 18, 2021. The only dispute in this matter concerns what, if any, remedy is appropriate for the Postal Service's failure to meet the obligation it agreed to, per the initial grievance settlement. This obligation was eventually met when a payment was made to the Grievant, albeit approximately three months late.

In considering the appropriate remedy, the Arbitrator is cognizant of the well-established principles affirmed by the *U.S. Supreme Court in U.S. Steelworkers of America v. Enterprise Wheel & Car Corp., 80 S. Ct. 1358 (1960)*:

When an arbitrator is commissioned to interpret and apply the collective bargaining agreement, he is to bring his informed judgment to bear in order to reach a fair solution of a problem. This is especially true when it comes to formulating remedies. There the need is for flexibility in meeting a wide variety of situations.

This flexibility is exercised within the context of a make whole remedy, returning the aggrieved parties to the position they would have been in had the violation not occurred.

The Postal Service argues that mistakes happen, as in the instant case, and that it made every effort to pay the Grievant expeditiously. The Arbitrator agrees that mistakes happen. The mistake at issue here, however, is part of a long pattern of similar violations. That is, there is no dispute that the Postal Service has agreed to pay grievance settlements made at the Rockville Post Office in 28 days. It has, however, repeatedly failed to live up to its agreements, necessitating the Union to file additional grievances to secure compliance, yielding several arbitration awards.

The Arbitrator does not agree with the Postal Service's contention that it made every effort to pay the Grievant expeditiously as this assertion is not supported by the record. After coming to an agreement,

the supervisor who made the agreement failed to process it. Whether or not this supervisor mistakenly believed that the grievance would somehow be processed by another management official is irrelevant in considering if the management of the Rockville Post Office made its best efforts to comply. Further, the delay was compounded by Pinthiere's missteps – both in initially filing the wrong form and then in failing to secure the employee's signature, as required. It is important to note the delay was not the result of any process at Eagan outside the control of the Rockville Post Office. Rather, the entirety of the delay stemmed from the mistakes made by various local management personnel. Repeated negligence on the part of management does not excuse the Employer from its obligations. This is especially true given the long history of management's failure to timely comply with grievance settlements at the Rockville Post Office.

The Postal Service further argues that there was no harm caused by the delay and that, at best, the Grievant may be awarded interest during the time in which the payment was delayed. The Arbitrator agrees that the Grievant is entitled to interest calculated on the payment of the settlement from the date on which it was due, May 18<sup>th</sup>, through August 14<sup>th</sup>. Further, while the Arbitrator is unconvinced the Union's suggested calculation of \$20 per day is warranted, the Arbitrator does agree some compensation, in addition to interest, is necessary in order to make the Grievant whole for the losses incurred as a result of the Postal Service's unjustified tardiness in fulfilling its obligation. This is especially so given the circumstances related to the settlement. This is not a case where the grievance settlement was reached to compensate the Grievant for a lost work opportunity. Rather, the grievance settlement was made after the Grievant was denied 80 hours of pay while sick with COVID. The Grievant suffered real hardship because of this loss, which necessitated a lengthening of the period of his car loan and the borrowing of money from family members.

Once the grievance was settled, the Grievant should have been able to rely on his Employer's commitment to timely pay the settlement. The delay in payment of the settlement necessarily contributed to the hardships faced by the Grievant. For these reasons, the Arbitrator orders the Postal Service to also provide the Grievant a lump sum payment in the amount of six hundred dollars (\$600.00), which, in the Arbitrator's judgment, is reasonable compensation for the losses incurred by the Grievant as a result of the Postal Service's failure to meet its obligation. Though such a calculation is necessarily imprecise, the Arbitrator believes this amount of compensation is reasonable given the harm suffered by the Grievant.

Concerning the \$1500 payment the Union requested be paid to the Local Branch, the Arbitrator agrees that the Union has suffered some losses because it was forced by the Employer to incur the time, effort, expense, and frustration of processing of yet another grievance in order to secure compliance with a voluntary grievance settlement. In the matter of the arbitration between United States Postal Service and National Association of Letter Carriers, AFL-CIO, (Grievant: Class Action; Post Office:

Gaithersburg, MD) (2020), Arbitrator Lawrence Roberts, found “it is the direct responsibility of the Employer to ensure” the processing of the grievance settlement occur and ordered \$2500 be paid to the NALC Branch, following an approximate 15-month delay (settlement payment due on May 17, 2017 and not executed until August 23, 2018). Given this award, as well as other arbitration decisions<sup>2</sup> in which the Union was awarded compensation for the harm suffered as a result of management’s failure to timely comply with grievance settlements, this Arbitrator is convinced the Union’s requested payment of \$1500.00 is reasonable.

Further, the Postal Service’s history of serially failing to comply with the settlements it voluntarily enters at the Rockville Post Office is unacceptable and does real harm to the Union, the employees involved, and the relationship between the parties. While the mistakes of several supervisors may be an explanation for the violation in this case, negligence cannot excuse the breach. The Postal Service is ordered to cease and desist from failing to comply with grievance settlements in a timely manner.

## **IX. AWARD**

Having heard the evidence and the arguments of the parties, the Arbitrator awards as follows:

1. The grievance is sustained.
2. Management violated Article 15 and controlling precedent when it failed to timely comply with the Grievant settlement on or by May 18, 2021.
3. Management is directed to cease and desist from failing to make timely payments to satisfy grievance settlements.
4. Management is directed to pay the Grievant a lump sum of \$600. Management is further directed to calculate and pay the Grievant interest on the amount of the settlement (the monetary equivalent of the 80 hours) from May 18, 2021 through August 14, 2021.
5. Management is directed to pay NALC Branch 3825 \$1500.

April 1, 2024



Sarah Miller Espinosa, J.D.  
Arbitrator

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<sup>2</sup> See also matter of the arbitration between USPS and NALC (Grievant: Class Action; Post Office: Rockville, MD) (March 24, 2016) (USPS K11N-4K-C15230700; DRT 13-350725) (Arbitrator Tobie Braverman); In the matter of the arbitration between USPS and NALC (Grievance: Class Action; Post Office: Rockville, MD) (November 7, 2014) (USPS K11N-4K-C 14140664) (Arbitrator Andree McKissick).



**AFFIRMATION**

I, Sarah Miller Espinosa, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Decision and Award.

April 1, 2024

A handwritten signature in black ink, appearing to read "Sarah M. Espinosa". The signature is written in a cursive, flowing style.

Sarah Miller Espinosa, J.D.