

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration *
*
between: * Grievant: Class Action
*
United States Postal Service * Post Office: Rockville, MD
*
and * USPS Case No: K11N-4K-C 13374003
*
National Association of * NALC Case No: 5013-SL-121
Letter Carriers, AFL, CIO *

BEFORE: Lawrence Roberts, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Anita O. Crews

For the Union: Alton R. Branson

Place of Hearing: Postal Facility, Rockville, MD

Date of Hearing: June 3, 2014

Date of Award: June 29, 2014

Relevant Contract Provision: Article 15

Contract Year: 2011

Type of Grievance: Contract

Award Summary:

This class action grievance was resolved in part by the Step B Team. However the Step B Team was unable to agree upon the remedy and declared an impasse. The evidence presented in this case supports the Union position and therefore their 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 3 June 2014 at the postal facility located in Rockville, MD, beginning at 9 AM. 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 class action contract grievance filed on behalf of Letter Carriers working at a Rockville, MD postal facility. The Step B Team resolved the case in part and declared an impasse in part.

In part, the Step B Team "finds that a violation of the National Agreement has been demonstrated in this instance and directs Management to adhere to the provisions of Article 15 as it pertains to implementation of grievance settlements." Accordingly, the Step B Team has processed payments awarded in Case Number K06N-4K-C 12170674.

That same Step B Team was unable to reach common ground in their discussion regarding the additional remedy requested by the Union and therefore decided to declare an impasse.

The Union contends that based on the arbitration decision the five individual names are due \$2240 for three (3) days of January 29-31, 2012, twenty-nine (29) days in February 2012, thirty-one (31) days in March 2013, thirty (30) days for April 2012 and twenty-four days for May of 2012. Since the date of the award is August 22, 2013, the Union believes it is reasonable to use the date of September 20, 2013, as the date the named employees should have had their money.

The Union is requesting that the five individuals be paid an additional ten (10) dollars per week starting January 17, 2014 until the money is in the pocket of the individual named in the grievance and a \$150 lump sum payment. In addition, they request a payment of \$750 to the Union to defray the costs of repeatedly filing this grievance.

Countering, the Employer contends the request of the Union is inappropriate and should be denied.

Obviously, the Parties were unable to resolve this dispute during the prior steps of the Parties Grievance-Arbitration

Procedure of Article 15. The Step B Team declared the impasse mentioned above on 17 January 2014 and the matter was referred to arbitration.

It was found the matter was properly processed through the prior steps of the grievance procedure. Therefore, the dispute 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 presentation 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
- 2A. Step B Decision K01N-4K-C 02186025

UNION'S POSITION:

The Union identifies this dispute to be a non-compliance issue. According to the Union, the Employer failed to make a timely pay adjustment.

The Union points out the merits have already been decided and the matter in this dispute is that of remedy only. The Union requests their remedy mentioned in their Undisputed Facts and Contentions found within that Step B Decision be granted.

And Union also asks the local be awarded a sum due to the fact it was necessary to file such an otherwise unnecessary grievance simply in order to obtain payment from a grievance

that had already been settled. The Union requests a reimbursement of \$750 be made in that regard.

The Union insists this is an appropriate remedy given the fact this has been a past issue at this Rockville facility. The Employer, according to the Union, has continued to delay pay adjustments in the City.

According to the Union, the Employer failed to meet at the Formal Step A and failed to provide any supporting evidence to the case file record in this instance.

While the Management Step B Advocate did state a position, the Union asks that no consideration be given to this since Article 15 mandates that requirement to be at the Step A level. The Union insists this would be a new argument and cannot be recognized at arbitration.

The fact of the matter is, according to the Union, that Management has not presented any contentions within this particular case file.

Simply put, the Union mentions their only gain in this matter is Management's compliance with a prior grievance settlement. And in that light, the Union asks their request in this matter be granted.

COMPANY'S POSITION:

Management claims the settlement request made by the Union in this matter is improper.

The Employer insists any payment to the Local is improper as the Service is already paying their representatives to participate in the grievance process.

The Agency argues the Union interprets the JCAM only to the Union's benefit instead of accepting it at face value.

The Employer Advocate totally disagrees with the local union being paid in this matter as a part of the remedy.

The Service also claims there was no language in the prior award stating that payment had to be made by a specific date. It is the claim of the Employer Advocate that any delay was not on purpose.

Management also insists the Grievants should not be receiving additional monies relative to that prior award.

The Employer requests the Union's requested remedy be denied.

THE ISSUE:

Did Management violate but not limited to Article 15 when they failed to timely pay for the five individuals listed in arbitration #K06N-4K-C 12170674 and if so, what is the appropriate remedy?

PERTINENT CONTRACT PROVISIONS:

ARTICLE 15

DISCUSSION AND FINDINGS:

In the first portion of this record, the Step B Team noted a violation of the National Agreement and thus directed payment as ordered per case styled K06N-4K-C 12170674. And the impasse resulted from a request by the Union for an additional remedy.

And to that end, paramount in my decision, in the prior steps of the grievance procedure, there was no objection by the Employer to the formal Step A remedy request made by the Union.

However, in the Employer's verbal opening statement, there were several contentions made by the Agency regarding the Union's requested remedy. However, in my considered opinion, the language of the Parties Agreement is absolute. Any Employer contention not cited at Step A cannot be considered.

Controlling in this instant case is the language found in Article 15.2 Formal Step A (d), wherein both Parties are required to make a full and detailed exchange at the Formal Step A. And it all must be reduced to writing. As I'm sure the Parties are aware, no new facts or argument(s) may be introduced beyond that point. The Step B Team may expand or further argue any Step A contention, however, new argument, objections or contentions beyond Formal Step A cannot be considered.

And to that end the "USPS Representative's Step B Position," extracted from Joint Exhibit 2, reads as follows:

"The case file was absent any contentions or supporting documentation from the Management Formal Step A Representative. The following is provided for consideration..."

The undersigned is of the considered opinion the last sentence noted above is simply too late at Step B. The Employer, by not presenting any Formal A objections, simply waived any right to do so at a later date. For Article 15 makes no exclusions to the language of Article 15.2 Formal Step A (d).

The Union introduced a requested remedy at the Formal Step A and it became part of the record. There was no objection raised by the Employer at the Formal Step A. In fact, the Employer failed to make any statement of facts or contractual

provisions relied upon. It was the Employer's choice to do so, however, failure to raise any arguments at Formal Step A bars the introduction of any objection or argument beyond that point. And with that said, the Employer waived their right to raise an objection to any argument presented by the Union at arbitration.

And on that basis, I am of the considered opinion the Employer is now barred from coming to arbitration and arguing that a requested Formal Step A remedy requested by the Union is irrational. Instead, again, in my view, the Employer should have made their argument(s) regarding any requested remedy at the Formal Step A level.

And even though the Parties settled the dispute itself, the rules set forth in Article 15 do not change. Article 15 creates an even ground that allows both Parties an equal opportunity to present their case. And any suggested or requested remedy becomes part of the record. However, once the dispute extends beyond that point, any argument, including remedy, becomes moot. This is according to Article 15.2 Step B (c) which states:

"The written Step B joint report shall state the reasons in detail and shall include a statement of any additional facts and contentions not previously set forth in the record of the grievance as appealed from Formal Step A."

It is clear the Employer did not argue any of the Union's requested remedy prior to arbitration. Either party cannot sandbag until Step B and present their entire case. Therefore, any argument made by the Employer at arbitration regarding remedy, simply cannot be considered.

And with that in mind, I have no other choice than to grant the Union's requested Formal Step A remedy request.

I found the remedy requested by the Union to be fair and reasonable considering all of the circumstances surrounding this matter.

I agree with the rationale of **Arbitrator Ellen S. Saltzman** provided in **K11N-4K-C 13294700**, at this same location, dated **20 April 2014:**

"The monetary award is meant to be corrective and to encourage contractual compliance. The Arbitrator was presented by the Union with a packet of Arbitrator's decisions with monetary awards in similar situations. In the same way that discipline is meant to be corrective and is progressive if necessary, so should monetary awards be in these situations."

And in that light, I agree with Arbitrator Saltzman with the thought regarding progression. The Parties Agreement cannot be read in a vacuum. Article 16 suggests progressive

discipline. And a corrective remedy for the violation by the Employer should be considered in the same regard.

I do not consider the requested remedy by the Union to be arbitrary or unreasonable. I believe there to be an unspoken guideline within the Wage Agreement that creates an equal playing field by and between the Parties. And the language of that same Agreement does not exclude a punitive award. And given the disregard for the discipline of Article 15, a punitive award is certainly within the boundaries of the Parties Agreement.

What the Union requests in this case is for Management to execute timely settlement payments.

First of all, this is a matter that is not directly defined via any Agreement language. Instead, this subject is one of those issues that fall under the general umbrella known as reasonableness. Again, that is a broad term when seeking specific guidance.

And there is not a single answer. I'm quite certain there are instances that require longer periods of calculation to arrive at an agreed upon settlement.

However, in the case of a defined payment, whether it is reached by and between the Parties or an arbitrator, the payment should process within the pay period. And it is understandable that some decisions may be reached or received at the very end of a particular pay period. And in cases such as this, it would only be reasonable to delay until the following pay period.

In their opening statement, the Employer Advocate stated "There was nothing in the contract or the arbitrator didn't say in the award that this payment must be made by a certain date. The award did not state that." This is a most unreasonable and absurd observation cutting to the core of Article 15 intent.

The following language written by the Step B Team in a **26 September 2013** Decision labeled **K11N-4K-C 13272222** is most applicable to this instant case:

"The DRP was designed to facilitate resolution of grievances at the lowest possible level. Both Management and the Union are obligated to specific requirements under Article 15. Management's failure to meet and/or provide written contentions affirming or refuting the claims of the Union hinder resolution of the dispute at the lower levels and denies them their ability to challenge the facts presented on any given grievance.

When this circumstance occurs, as herein, the Team is obligated to rely on the documentation provided as an undisputed factual accounting of events, in order to resolve the dispute, as has been done in this instance."

Even the local Parties recognize that the absence of Step A contentions formulate acquiescence and bar any further objection. And that is exactly what has happened in this matter. The Employer failed to present any argument or dispute any of the fact relative to this matter at Step A.

Therefore, with all of the above reasoning, the Union's requested remedy found on Page 15 of Joint Exhibit 2 is hereby granted, reading as follows:

#19. Remedy requested: Immediately pay each of the following five Carriers \$2,340.00. Y. Chang, K. Tam, S. Yang, S. Heng and L. Pan. In addition to this, immediately pay each of the above listed five Carriers a lump sum of \$150.00 due to the payment being untimely. Also, immediately pay the aforementioned five Carriers ten dollars per week from January 17, 2014 until the above five Carriers receive their due money.

The Union is also requesting (so ordered) a payment of \$750.00 payable to NALC Branch 3825 to help defray the costs of having to repeatedly grieve untimely pay adjustments.

Management will cease and desist being untimely concerning pay adjustments.

It is so ordered.

AWARD

The grievance is sustained and Union's requested remedy is granted in accordance with the above.

Dated: June 29, 2014
Fayette County PA