BEFORE THOMAS F. LEVAK, ARBITRATOR

In the Matter of the Grievance Arbitration between:

U. S. POSTAL SERVICE

THE "SERVICE"

and

AMERICAN POSTAL WORKERS UNION, AFL-CIO, ON BEHALF OF P.DRAKE, THE "GRIEVANT"

THE "UNION"

CASE NO. W1C-5K-C 2019

DISPUTE AND GRIEVANCE CONCERNING ENFORCEMENT OF PARKING REGULATIONS

ARBITRATOR'S OPINION AND AWARD

C# 00167

This matter came for hearing before the Arbitrator at 9:00 a.m., November 12, 1982 at the offices of the Service, Phoenix, Arizona. The Union was represented by Robert Tunstall. The Service was represented by Dave English. The Grievant, P. Drake, appeared and gave testimony on his own behalf. Testimony and evidence were received. Based upon the evidence and the arguments of the parties, the Arbitrator decides and awards as follows.

I. THE ISSUE ON THE MERITS.

On November 4, 1981, the Grievant's automobile was parked in the lot of the Phoenix main office. Management had the car towed from the lot without warning for the purported reason that it was parked in a reserved area in violation of a written rule. The issue on the merits, as framed by the Service, is: Did management have cause to tow the Grievant's car, and if not, what is the appropriate remedy? The issue as framed by the Union is: Was management's action reasonable, and if not, what is the appropriate remedy? Relevant articles of the National Agreement are Articles 15, 19 and 20.

II. THE PROCEDURAL ISSUE.

At the commencement of the arbitration proceedings, the Service contended that the grievance was procedurally defective and should not be put before the Arbitrator on the merits for the purported reason that the Union failed to submit copies of the standard grievance form and the Service's Step 2 decision with its Step 3 appeal.

The Union submitted that the subject documents had indeed been mailed, and even had they not been mailed, such did not render the case procedurally defective. In support of its position, the Union cited Case No. W8C-50-C-11448, involving Jeffrey Stout, decided by arbitrator William E. Renfro on January 12, 1981.

The arbitrator ruled that the case was arbitrable on the merits for two reasons: First, the only direct evidence was that the subject documents were mailed, even if not received by the Service. Second, the Arbitrator agrees with the reasoning of arbitrator Renfro set forth in the Stout decision cited by the Union. In that case, arbitrator Renfro stated:

> Management contends that the Union's grievance is procedurally defective in that in its appeal to Step 3 of the procedure it failed to strictly comply with all the requirements of Article XV, Section 2, Step 2(h), set forth above. The appeal from an adverse Step 2 decision was timely made within 15 days. It consisted of a Notice of Appeal and a copy of Management's Step 2 answer, but omitted a copy of the standard grievance form. For this omission, the Postal Service asks that the Arbitrator rule the grievance not arbitrable.
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> The Arbitrator cannot agree with Management's position on this technical point. To throw out a grievance that had been timely filed and appealed, on the technical ground that the Union failed to include a grievance form which contained only information Management was fully aware of, would be exalting form over substance and would work an unfair forfeiture of a contractual right.
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> The fact that the contract language provides that a copy of the standard grievance form must be included with the appeal does not necessarily mean that the grievance should be forfeited if the Union fails to comply. Management has adopted a policy of sending such defective Step 3 appeals "back to the Union for appropriate processing." Sending the appeal back so that it can be properly processed is one thing. Throwing it out as not arbitrable is quite another.
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> Further, it should be noted that although the parties use the word "must" in describing the requirements that Step 3 appeals must be within 15 days and must include a copy of the standard grievance form, under Section 3 only the failure to meet required time limits is considered by the parties to constitute a waiver of the grievance. Obviously the parties did not intend that the technical defect in this case be treated the same as the serious problem of failure to meet prescribed time limits. It is undisputed in the record of this case that Management was in no way inconvenienced or

prejudiced by not finding a copy of the standard grievance form attached to the appeal. It knew the basis for the grievance and it had access to the form from its own sources.

Arbitrator Renfro is a member of the Western Regional Panel. His opinion and reasoning are sound and in conformity with the National Agreement. The Arbitrator follows the principle that, absent special or extenuating circumstances not here present, due deference should be given to a well-reasoned principle or rule fashioned by another arbitrator on the same panel. The ruling of the Arbitrator at the hearing is hereby confirmed.

III. FINDINGS OF FACT.

Prior to March 1981, whenever a vehicle was found parked improperly in a designated space at the Phoenix main office, the employee involved would be notified to move his car. On February 20, 1981, the following notice was posted throughout the office:

February 20, 1981

ALL EMPLOYEES - ALL TOURS

NOTICE:

BEGINNING MONDAY, MARCH 2, 1981, AT 0800 ALL VEHICLES THAT ARE PARKED ILLEGALLY IN DESIGNATED SPACES, FIRE LANES, BLOCKING GATES, ETC. WILL BE REMOVED (TOWED) AT OWNER'S EXPENSE.

PLEASE PARK YOUR VEHICLES IN A PROPER PARKING SPACE.

R. Walters
Manager, Distribution

cc: A. Leroy Brewer
R. Hyde

(Management Ex. 4)

Employees were also informed in standup talks that improperly parked cars would be towed without notice. The Grievant was generally aware that cars parked in designated areas would be towed.

In actual practice, no employees' cars were towed unless a complaint was made by an employee entitled to park in a designated space that was improperly taken by an employee not entitled to park there.

In early November 1981, reserved parking spaces were designated as such by stenciled words on a curb at the head of each parking space.

At that time, a curb running through the center of the parking lot bore such stenciled designations at the head of most spaces. However, no stenciled designations appeared at the head of five spaces at one end of the row. The stenciled designated spaces abutting those un-designated spaces bore the term "SUPV" for supervisor.

For about one and one-half months prior to November 4, the Grievant arrived early enough at work to obtain the un-designated space at the end of the row. On November 4, 1981, he again parked in that spot. Later in the day, a supervisor reported that the Grievant's car was parked in that spot. The Grievant's car was towed without notice.

The space occupied by the Grievant had apparently been stenciled sometime in the past either on the curb or on the asphalt itself as a supervisor's designated space. Therefore, the Service considered the space to be reserved to supervisors.

The Grievant was able to obtain a ride home. However, the next day he was unable to obtain a ride to work. Because his checkbook and wallet containing all his money were in the car, he was unable to take a taxicab. Prior to his shift, he explained to his supervisor that he had a back problem and was on light duty, and therefore could not walk one mile to the bus stop to take a bus to work. The Grievant's supervisor was unsympathetic and told him to report to work. The Grievant was unable to get to work and ultimately lost a day of pay, including one and one-half hours overtime which he would have otherwise worked.

At about 6:00 p.m. on that day, the Grievant was finally able to obtain a ride to go to the offices of the Service to pick up his paycheck. He was told by his supervisor, "You didn't work today and you don't deserve your check." Ultimately, he had to go a higher supervisor, who got the Grievant his paycheck. The Grievant was then able to cash the paycheck and reclaim his car.

At the Step 1 meeting, Union President Robert Strunk met with the Grievant's supervisor in the parking lot. Mr. Strunk pointed out to the Grievant's supervisor that another employee, Pete Rivera, was parked in a space stenciled and designated for a supervisor. The Grievant's supervisor conferred with her general foreman on the matter of Mr. Rivera's improperly parked car, and the general foreman stated that the car was not to be towed since there was no actual "complaint" from an employee entitled to the space. Mr. Rivera was

simply asked to remove his car.

IV. CONTENTIONS OF THE PARTIES.

(a) Union Contentions. (i) It is undisputed that prior to the execution of the current National Agreement, the policy was to notify employees. Article 20 of the Agreement states that existing parking programs shall be maintained in effect. The Service's towing policy is contrary to Article 20. (ii) The Grievant never had notice that the space utilized was reserved for supervisors since it was not stenciled as such. (iii) The Service has inequitably applied its rule by allowing Mr. Rivera to remove his car without being towed. (iv) On a subsequent occasion, twenty-four to twenty-six employees who were illegally parked were towed, but subsequently were reimbursed.

(b) Service Contentions. (i) The Grievant is in the same position as a speeder who has sped on numerous occasions but was simply caught on one. Accordingly, he must bear the penalty. (ii) It is incredible that the Grievant would not have known of the towing policy. The Union was notified, all employees were notified, and there was wide publicity. (iii) Management has been consistent in its application of its rule and has not been discriminatory. Even supervisors have been towed. (iv) The Grievant admitted that the parking spot he utilized was questionable. He was simply attempting to take advantage of some possible technicality that no stencil was in existence at the time on the headstone. (v) It is incredible that an employee who had worked for seven years in the Phoenix office would not be able to get a ride to work. Public transportation was available. It is noteworthy that the Grievant was able to get to work to obtain his paycheck. (vi) Any incident following the incident in question does not create an inconsistency.

V. DISCUSSION, REASONING AND CONCLUSION.

The Arbitrator concludes the Union has established by a preponderance of the evidence that management's action was unreasonable and that management did not have cause to tow the Grievant's car. Accordingly, the grievance is sustained. The appropriate remedy in this case is that the Grievant be reimbursed $56.00 for towing charges

and also for eight hours pay at his then-existing rate, plus one and one-half hours at the overtime rate. The following is the reasoning of the Arbitrator.

First, it is patently clear that the Service failed to properly apply an otherwise valid written rule. The published rule quite clearly states that, "vehicles that are parked illegally in designated spaces ***" will be towed. The rule does not refer to whole areas of the parking lot, but only to designated spaces. Had management wished to refer to entire sections or areas of the parking lot, it could have easily done so. By using the phrase, "designated spaces," it quite clearly communicated the message that the only individual spaces prohibited from general use were those specifically designated at the space.

Second, the Arbitrator is compelled to strictly construe the rule against the Service for the reason that the penalty for a violation is so severe. While this case is not technically a disciplinary case, the penalty of towing can only be considered as a substitute for a discussion or warning. There simply is no other way to construe action which results in a minimum loss of $56.00.

Third, the Arbitrator agrees with the Union that the Service's rule has been applied in an inequitable manner. The rule itself calls for towing without notice. The unwritten and unpublished exception to the rule that a vehicle will not be towed absent an "official" complaint is discriminatory and unfair. Mr. Rivera's action directly caused the loss of a supervisor's space. There is no good reason why he remained exempt from towing.

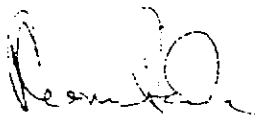
Finally, regarding the appropriate remedy, under the above-stated facts, the Grievant is clearly entitled to all lost wages, in addition to the towing cost. The Grievant's losses were directly caused by the improper towing of his vehicle. Any doubts regarding the appropriateness of the remedy would necessarily be resolved in favor of the Grievant due to the rather inexplicable treatment of the Grievant by his immediate supervisor during the events in question.

For all of the above reasons, the grievance is sustained.

AWARD

Management did not have cause to tow the Grievant's car, and its action was unreasonable. The Grievant shall be reimbursed $56.00 towing charges and for eight hours pay at his then-existing rate, plus one and one-half hours overtime pay.

Dated this 14th day of December, 1982



Thomas F. Levak, Arbitrator