

C# 07642

ARBITRATION PROCEEDING
[Regular]

In the Matter of the Arbitration)

-between-)

UNITED STATES POSTAL SERVICE,)
Redding, California MSC, Redding)
Annex,)

The Employer,)

OPINION AND AWARD

-and-)

NATIONAL ASSOCIATION OF LETTER)
CARRIERS (NALC), Branch 133, on)
behalf of Gerald W. Flaxbeard,)

The Union and)
Grievant.)

OF

ARBITRATOR

W4N-5H-C 46068 [NALC 7812])

Re: Propriety of "Letter of Demand")
(Retroactive Life Insurance)
Premium))

Joseph F. Gentile
Arbitrator

December 14, 1987

Los Angeles, California

[2313-3116-87]

STATEMENT OF THE MATTER

Gerald W. Flaxbeard ("Grievant") is a City Carrier for the United States Postal Service ("Service" or "Employer") with a career service date of February 18, 1984. In this position the Grievant is covered by the National Agreement between the Service and the National Association of Letter Carriers ("NALC" or "Union").

As part of the transition or conversion from casual status to a career City Carrier, the Grievant completed his "Life Insurance Election" Form [Form 2817] in a timely manner on February 22, 1984. The Grievant selected "1" under Option A (Standard Insurance Coverage), "5" under Option B (Additional Optional Insurance Coverage) and "1" under Option C (Family Optional Insurance).

In the insurance coding system used, the Grievant was a "1151 Z". Form 2817 was executed by a representative of the Service ["employing agency"] which indicated the Grievant was eligible for the insurance coverage "he has elected above." According to the instructions provided on Form 2817, the form, when certified by the "employing office," which it was on February 22, 1984, and the insurance booklet ("Federal Employees' Group Life Insurance" ("FEGLI")), "will constitute your certification of coverage."

With reference to Option B, the Grievant is responsible for the full cost of this additional, optional life insurance and the payments for this coverage will be deducted through withholding from his pay in accord with a schedule printed in the FEGLI.

Form 50 is a form used by the Service to record and memorialize "personnel actions" which affect an employee's status with the Service. This evidence record indicated there were three Form 50s completed with respect

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to certain personnel actions having an impact in this case.

A Form 50 ("50-1") was prepared on February 29, 1984. This document memorialized the Grievant's conversion to a career appointment. The effective date was listed as February 18, 1984. In Section 12 of this Form, the Grievant's "life insurance" was coded as a "C." This code means the Grievant had "regular coverage only" and not the additional, optional life insurance coverage he had requested under Option "B."

It appeared, however, that 50-1 had been placed into the "paper stream" before the Grievant's election on February 22, 1984, an election which called for the additional, optional life insurance coverage discussed above.

On May 17, 1984, another Form 50 ("50-2") was prepared to reflect a "master file record review" of the Grievant; the effective date was May 12, 1984. 50-2 reflected a life insurance coding of "C" in Section 12. Thus, according to the Service's own records at this point in time, the Form 50 used to track changes in the Grievant's employment and benefit status did not reflect his requested and certified additional, optional life insurance coverage.

Parenthetically, the Grievant's check statements did not reflect any withholding deductions for the additional, optional life insurance coverage for pay periods 04/84 and 05/84. The next statement, 06/84, did reflect an entry for "Ins" with "00" deduction and the word "adjust." After that date until pay period 07/87, no entries were reflected in the Grievant's check statements for additional, optional life insurance coverage.

In 1985 the Service came out with an updated FEGLI and an "Open enrollment" period of June 1 to July 1, 1985, for employees to consider "your new opportunity to enroll or to increase protection at lower cost." The Grievant testified he did not consider this as he thought he was sufficiently covered.

The next relevant event took place on or about October 7, 1986. On this date the Grievant reported to the Service a change in beneficiaries. The absence of payments for the additional, optional life insurance coverage was not detected; however, in or around early 1987, this was discovered.

According to the Grievant, he was given three options: (1) to accept the lower life insurance coverage; (2) "continue" the additional, optional life insurance coverage by paying the back premiums to February, 1984 or (3) take a physical as an "out-of-season" at his own expense.

At the direction of the Service, the Grievant completed a Form 2822 (a FEGLI Form), on or about February 23, 1987, which demonstrated his desire to have the additional, optional life insurance coverage. In Section 6 of this Form, the date of February 22, 1984 was listed as the "effective date of employee's last waiver or declination of life insurance coverage." It was signed by the Grievant on March 4, 1987, and "approved" on March 23, 1987 by the "providing officer," whose signature was not clear. This Form 2822 was not signed by a "certifying agency official."

Parenthetically, the above Form 2822 was not part of the Grievant's official file. In any event and in keeping with the options provided, the Grievant had a physical examination on March 4, 1987 by John R. Munro, M.D. ("Dr. Munro"). Dr. Munro sent a bill for \$26.00 for the examination.

Subsequent to the above examination by Dr. Munro, the Grievant was informed by the Service that this was not necessary.

It was at this point in the unfolding chronicle that a third Form 50 ("50-3") was written. It was dated March 23, 1987. 50-3 reflected a "correction" to the former 50-1 [the one dated February 18, 1984] "due to clerical error" and made effective the additional, optional life insurance cover-

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age on February 22, 1984. 50-3 now reflected a coding of "Z" in Section 12. Coding "Z" indicated the additional, optional life insurance coverage. Appropriate deductions from the Grievant's pay commenced with pay period 07-87.

On March 16, 1987, the MSC Manager in Redding, California, was instructed by the Service's Distribution Officer in Form 1903-OZ to "collect for optional insurance Code Z from 022284 through 031387 (pay periods 0584 through 0687)" from the Grievant in the amount of \$508.14.

A "Letter of Demand" was prepared by R. L. Kiel ("Kiel"), the MSC Manager/Postmaster. It was dated May 29, 1987 and received by the Grievant on this same date. In this letter, Kiel stated, inter alia:

"[t]he Postal Service, due to administrative error, did not process your life insurance request in a correct manner - leading to no amount being deducted from your paycheck for life insurance. The problem was corrected in March of this year and the proper amount is now being deducted from your paycheck. This Demand Letter is issued to cover the insurance premiums that were not deducted during the above mentioned period."

The Grievant did not agree with the assessment. A grievance meeting was held on June 8, 1987 with Mike Barone ("Barone"), Supervisor. The Union requested reimbursement for the cost of the unnecessary physical examination and that the Letter of Demand be rescinded. On this same date, Barone issued his decision and denied the grievance. The NALC appealed the matter to Step 2 on June 15, 1987.

Kiel issued his Step 2 decision letter on June 30, 1987. In this letter, Kiel "denied" the grievance. This denial was based on these stated reasons:

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1) "it is reasonable to expect [the Grievant] should have noticed no deductions were being made each pay period";

2) "it is each employee's responsibility to review his...earnings statement and advise appropriate officials of errors of pay";

3) "the payment of life insurance premiums...due the carrier cannot be waived...", and

4) "[i]n the event of [the Grievant's] death, his designated beneficiary would have received the amount he would have been entitled to under the terms of the supplemental coverage."

The matter was appealed to Step 3. A Step 3 meeting was held on September 10, 1987. A Step 3 decision was rendered on October 8, 1987 by the Service. This decision denied the grievance and stated, inter alia:

"After a review of the file and discussion at the meeting, I find no violation of the National Agreement. The late personnel action is not a reason to mitigate payment by the employee. ELM Section 535.124C clearly states, 'Late elections are effective retroactive to the pay period beginning immediately after the one in which the employee first became eligible.' The employee was covered even though they had not been paying. Therefore, the Letter of Indebtedness for \$508.14 was proper."

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The matter remained at impasse; thus, it was moved to arbitration before the undersigned on Wednesday, December 9, 1987 in the Service's facilities at 1647 Yuba Street, Redding, California.

During the course of the hearing all Parties were afforded a full and complete opportunity to be heard, cross-examine witnesses, develop arguments and present relevant evidence. No official transcript was made of the hearing. All witnesses appearing before the Arbitrator were duly sworn. After receipt of the evidence, closing arguments were presented orally. The matter stood fully submitted as of December 9, 1987.

The Grievant was fully and fairly represented by the Union. He attended the entire hearing and testified.

APPEARANCES BY COUNSEL

For the Service:

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For the Union:

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ISSUES

At the beginning of the hearing, the Parties could not agree on the statement of the issue. The Union

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stated it would frame the issue in this manner:

"Was the 'Letter of Demand' issued to the Grievant on May 29, 1987 justified under the National Agreement? If not, what should the remedy be?"

The Service would agree with the above if the words "under the National Agreement" were excised.

As to the remedy, this evidence record established that the Grievant was reimbursed by the Service for the physical examination; thus, that became a non-issue.

The Parties stipulated the matter was properly before the Arbitrator for hearing and decision.

APPLICABLE CONTRACT TERMS

The subject of "Life Insurance" is briefly identified as one of the benefit plans in Article 21, Section 2. In Section 2, the Service is mandated to "maintain the current life insurance program in effect during the term of this Agreement."

Article 28 addresses "Employer Claims" and provides in Article 28's preamble for the following:

". . . [i]n advance of any money demand upon employee for any reason, the employee must be informed in writing and the demand must involve the reasons therefor."

Sections 2, 3 and 4 of Article 28 then address specific situations, none of which is applicable to the facts in this arbitration. Section 4 delineates the "Collection Procedure."

Article 19 incorporates by reference certain parts of handbooks and manuals. Included within this incorporation are provisions of the Employee and Labor Relations Manual ("ELRM"). Section 530 of the ELRM details the "administration and eligibility" of and for the life insurance program. Section 531.1 makes clear that the life insurance program is administered by the Civil Service Commission ("CSC").

Section 533.2 states that "[t]he entire cost [of optional insurance] is paid by the employee and is withheld from pay as determined by the CSC."

Section 533.223 covers situations in which an employee may have his optional insurance coverage terminated because the amount of his pay may be insufficient to cover the withholding deduction. The Union referenced this provision for analogy purposes.

As already indicated in the Service's Step 3 written response, Section 533.124c was referenced. Section 533.124 addresses "belated elections" by an employee who was unable to timely elect optional insurance due to a "cause beyond the employee's control." Subsection 533.124b covers the documentation required "if an employing office accepts a late election" and Subsection 533.124c states the retroactive application in "late election" situations. The Service argued the Grievant's situation was analogous to a "late election" caused by an event beyond the employee's control."

DISCUSSION

The factual context for this dispute is deceptively simple and direct: the Grievant made a timely application

for the additional, optional life insurance package provided by the Service. All necessary paperwork was completed by the Grievant. The Service, the employing agency, did not process this paperwork; thus, no premiums were withheld from the Grievant's pay to cover the required cost. The reason given by the Service was "administrative or clerical error." No payroll deductions were made and this situation continued until the "error" was uncovered some three years later by the Grievant's request to change his beneficiaries.

The Service informs the Grievant that he was indeed covered during this period; thus, under the "belated election" provisions of the ELRM, the Service now asks for the past premiums in a "Letter of Demand."

The Grievant responds, "how do I know I was covered during this time and that my beneficiaries would have received the additional, optional life insurance coverage had I died?" The Service answers: "there is no documentation which states you were covered, but you did have the 'certification of coverage,' namely, the completed Form 2817 and the FEGLI booklet." The Grievant questions whether he would have been covered under these circumstances and refuses to pay the back premiums.

Fortunately for the Grievant, the ultimate test of coverage did not take place.

As to the responsibility to ensure that all of the steps are followed, the Service is correct that this responsibility is a joint matter; however, the primary responsibility rests with the Service. The Grievant did all that was required of him -- it was the Service which committed the "administrative or clerical error."

The Grievant testified he did not notice the absence of the deductions and, if he had, he would have reported it immediately. This testimony is credited.

The ELRM does not expressly address this type of situation. Whether the Grievant's beneficiaries would have received the benefits of the additional, optional life insurance is, as the word is used by the legal profession, "arguable" -- "open to argument, debate or question." The Service argued the Grievant's beneficiaries would have received the benefits; however, without more definitive documentation, this Arbitrator can not be that certain.

Given this degree of uncertainty and accepting the Grievant's testimony that he acted in good faith and did not notice any possible "error," the Arbitrator can not reasonably find that the Grievant must now pay for the questionable life insurance coverage during the time the premiums were not paid. Therefore, the "Letter of Demand" is not justified given this evidence record.

One lesson can be learned from a careful reading of Article 28 -- an employee "shall be financially liable" for shortages in fixed credits in certain situations, for loss or damage of the mails or for damage to the Service's property and vehicles. In the instant situation, it was the Service which failed to exercise reasonable care in the performance of its duties. This also influenced the Arbitrator's decision that the "Letter of Demand" was not justified.

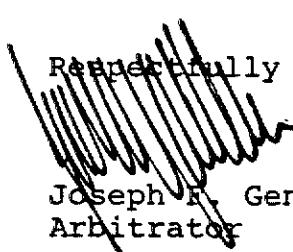
AWARD

Based on a careful review of this evidence record, it is the AWARD of this Arbitrator that. . .

The "Letter of Demand" issued to the Grievant on May 29, 1987 was not justified under the National Agreement.

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As to a remedy, the Grievant is
excused from making the payment
demanded in the May 29, 1987
"Letter of Demand"


Respectfully submitted,
Joseph R. Gentile
Arbitrator

JFG:kk

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