

C# 204

BEFORE
ROBERT W. McALLISTER
ARBITRATOR

In The Matter of Arbitration)	Case No. ClC-4J-C 22995
)	Randall S. Rosenow, Grievant
Between)	
)	
UNITED STATES POSTAL SERVICE)	William Simmons
MILWAUKEE, WISCONSIN)	Postal Advocate
)	
And)	
)	Jerry Fabian
AMERICAN POSTAL WORKERS UNION))	APWU Advocate

RECEIVED JUL 16 1984

Hearing: April 13, 1984

I. FACTS

On September 2, 1983, at approximately 6:30 P.M., the Grievant, Randall S. Rosenow, requested a Union steward because he disagreed with the scheduling of breaks for that night. A steward was provided sometime after 12:00 Midnight. The Union, however, claims the Postal Service violated the provisions of Article 17, Section 3, by failing to timely release a steward to timely investigate the grievance herein. The parties have been unable to resolve the matter and have submitted the issue to this Arbitrator in accordance with the National Agreement.

II. ISSUE

Did the Postal Service violate the provisions of the National Agreement when, on September 2, 1983, it did not grant permission to a steward to investigate the complaint of the Grievant until approximately five and one-half to six hours had elapsed from the time of the initial request?

III. RELEVANT CONTRACT PROVISIONS

Article 17

IV. POSITION OF THE UNION

The Union contends the evidence adduced is broader than the single incident which provoked this grievance. The Union believes it has presented clear and convincing testimony that the Milwaukee post office has on an ongoing basis violated its enunciated policy regarding the release of Union stewards to conduct investigations.

According to the Union, the supervisor, who denied representation, admitted he does not follow policy. The Union also asserts he failed to indicate he made any other effort to free up a Union steward by providing him with relief. On the night of September 2, the Union asserts, an unusual situation developed wherein a three hour keying cycle was required. By delaying discussion of the problem, the Union argues, management was able to avoid the problem and mandate its position. The claimed inability to provide release to a steward is seen, by the Union, as a failure by management to provide adequate relief. The uncontroverted testimony of the steward is that he is generally denied release for three to four hours. The Union asks the Arbitrator to issue a cease and desist order informing the Postal Service that future violations will not be tolerated.

V. POSITION OF THE POSTAL SERVICE

The Postal Service points out this grievance is not a class action case. No other examples of alleged violations were discussed during the grievance steps. The question, as posed by the Postal Service is, did the supervisor act reasonably on September 2? The Postal Service refers to a March 10, 1977, regional memo which addresses the subject of the release of stewards under Article 17. It is claimed this memo represents the existing policy, which states that a reasonable time period dictates that a Grievant and steward should be able to discuss a grievance without delay, but 95% of the time with no more than a two hour delay. Considering this policy, the Postal

Service argues, the five and on-half hour delay on September 2 was not unreasonable.

The Postal Service avers there is no basis upon which it can be required or expected to overstaff. The problem giving rise to the grievance on September 2 was not serious enough to warrant or mandate a meeting within two hours. September 2 was a heavy mail night prior to a holiday, and there were legitimate business reasons not to grant the Grievant's request, but management notes it did release a steward during the tour and not the next day.

VI. DISCUSSION

The grievance of Randall S. Rosenow is not a class action grievance. Initially, the Union requested, as a remedy, action against the supervisor for failing to follow instructions of his superiors and comply with the request for representation. The Postal Service's Step 2 decision clearly infers it was operating under a belief that the March 10, 1977, regional memo is effective policy. Notwithstanding, the Union introduced a document which was authored by the Operation Manager, LSM area, and dated May 9, 1983. In the note Mr. Heiser addressed General Supervisors and MPLSM Supervisors and stated:

"Union stewards must be released within two hours when requesting to go on legitimate business."

Whether or not equipped with the authority to enunciate such policy, the memo is clearly more restrictive than the 1977 regional policy memo.

From the testimony of Supervisor Hoffman, the Arbitrator concludes he was unfamiliar with either document and simply doing what he was told to do. Supervisor Hoffman candidly admitted relief on the 7:30 P.M. LSM crew was a problem and that, when he has relief, he relieves stewards, and, when he does not have relief, he goes to the General Foreman. Once he does so, Hoffman stated that it is then up to the General Foreman.

There is no question that, on September 2, 1983, the mail volume was extremely heavy. Secondly, the issue raised, while of imminent impact, was not an emergency situation. Nevertheless, given the background developed through uncontroverted Union testimony concerning prior delays in obtaining Union representation, the denial for some six hours was more in keeping with management's propensities than due to the exigencies of the night's operation.

Neither Article 17 nor the regional memo of 1977, which establishes policy with regard to the release of stewards, requires the Postal Service to provide such representation without thought to operational needs. The policy enunciated in the 1977 memo is generally more restrictive on management than practices encountered in the private sector. Clearly, such policies act to balance the equities between the daily demands of the operation and contractually granted rights of Union representation. The definition of "reasonable" set forth in the March 10, 1977, memo is not ambiguous. In most

cases, it means what it says, which is the Grievant and steward should be able to discuss a grievance without delay a majority of the time (more than 50%). The policy next indicates that 95% of the time the delay should be no more than two hours. This is the difference between "most cases" and 95%. The 5% factor is reserved for circumstances that ". . . will sometimes necessitate a delay of more than two hours."

The Postal Service reiterated its position at the hearing that this policy was considered to be in place and operative on September 2, 1983. The evidence indicates otherwise.

The Arbitrator is concerned because management's prior actions have colored an otherwise strong and convincing argument that the denial was, in fact, based upon operational necessity. However, when policy is abused or stretched for the benefit of one party, it is virtually impossible to accurately sort out motivation. There is no doubt in this Arbitrator's mind that similar, operational problems, as existed on September 2, could fall into the 5% exception enunciated in the 1977 policy memo. But, when the exception is shown to be more the norm, management places itself into a position where credibility is questioned.


In summation, I find the preponderance of evidence demonstrated Postal Service management was not following established policy on September 2, 1983, for the release of stewards under Article 17. The remedy requested is not appropriate for a single claimed violation, and this Arbitrator, having found the

case not to be a class action grievance, believes he does not possess the power to issue an overall cease and desist order. Having found a violation, the Arbitrator is constrained to say management was wrong on September 2, 1983. Hopefully, the discussion above will help clarify management's responsibility under a policy promulgated by the Regional Director of Employee and Labor Relations.

VII. AWARD

Claim sustained in accordance with the above.

Chicago, Illinois
July 5, 1984



Robert W. McAllister
Arbitrator