

REGULAR ARBITRATION

In the Matter of the Arbitration)	Grievant: Class Action
between)	Post Office: Unionville, CT
United States Postal Service)	Case No. B11N-4B-C 14019182
and)	DRT No. 14-291168
National Association of Letter Carriers, AFL-CIO)	Union No. 13-06085-12

BEFORE: James R. Collins, Arbitrator

APPEARANCES:

For the U. S. Postal Service: Nita Fournier, Labor Relations Specialist

For the Union: Charles Carroll, NALC Advocate

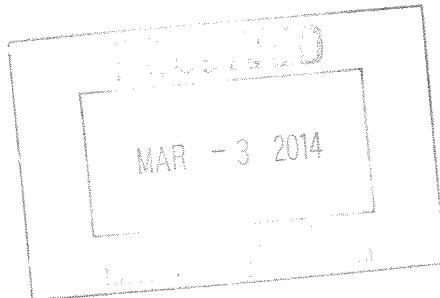
Place of Hearing: 141 Weston St., Hartford, CT

Date of Hearing: January 28, 2014

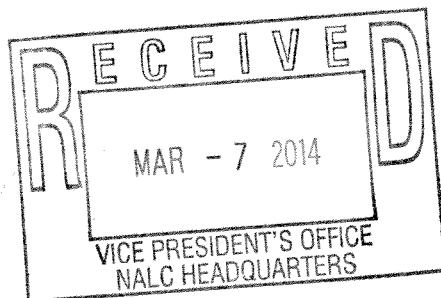
AWARD: The grievance is granted.

Date of Award: February 27, 2014

PANEL: NALC Region 14/USPS Northeast Area Regular Panel

Award Summary

The grievance is arbitrable, because the issue was not adjudicated previously. The grievance is granted, as Management made time card swipes/TAC moves for letter carriers in violation of Article 1.6; however, the relief requested is denied in part.




James R. Collins

Issue

Is the grievance arbitrable?

If so, should Unionville City Carriers receive pay for management having made time card swipes/TAC moves in lieu of having instructed those carriers to have done the work themselves, is it a violation of Articles 1, 3, 5, 7 and 8 and if so, what is the proper remedy?

Contract Provisions and Other Applicable Provisions

Article 1, Section 6, Performance of Bargaining Unit Work

A. Supervisors are prohibited from performing bargaining unit work at post offices with 100 or more bargaining unit employees, except:

1. in an emergency;
2. for the purpose of training or instruction of employees;
3. to assure the proper operation of equipment;
4. to protect the safety of employees; or
5. to protect the property of the USPS.

B. In offices with less than 100 bargaining unit employees, supervisors are prohibited from performing bargaining unit work except as enumerated in Section 6.A. 1 through 5 above or when the duties are included in the supervisor's position description.

JCAM 15-8

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.

Handbook PO-209, Retail Operations Handbook, 4-4.2 Clock Rings

Employees are required to input correct operational transaction codes. Management is responsible for reviewing the Time and Attendance Control System Report and the Clock Ring Error Report and processing any necessary corrections. Management is responsible for the accuracy of the entries on time cards, must provide appropriate documents supporting time card entries to the timekeeper, and must ensure that the timekeeper complies with the procedures in Handbook F-21.

Findings of Fact

The Unionville Post Office (UPO) has five city routes and had six or seven letter carriers in 2013. The record showed that accurate record-keeping through the Postal Service's Time and Attendance Collection System (TACS) is very important for payment and allocation of labor, planning, budgeting, and other operational purposes; and, that letter carriers are supposed to punch in and out of work, when leaving for and returning from street duties, and when doing splits and changing work positions within the post office. Renee McGee, the UPO Postmaster, acknowledged that she had worked in post offices where the letter carriers did all their own clock punches. Postmaster McGee testified that it was her responsibility to regularly review the

TACS records, as part of her daily review of the Delivery Operations Information System records, and to make adjustments/changes as needed to ensure that the time and location of swipes/rings were accurate.

According to Postmaster McGee's testimony, the first nine months of 2013 were difficult for the UPO, due to employee turnover and training new employees. Postmaster McGee testified that a letter carrier retired in January 2013; that they began using a PTF to fill in at that time; that the PTF transferred in March to a different location; and, that another letter carrier left in April or May. She further testified that the UPO was short-handed and overloaded with work in July; that they obtained a delivery supervisor by transfer in July and hired two CCA's in the summer to help cover prime vacation time; that they still had only three employees to cover the UPO's five routes during the summer of 2013, working overtime regularly, up to sixty hours a week; that she often ended up putting in splits for letter carriers on the TACS system; and, that she had trained the letter carriers in how to put in their time for all changes in work station, but that some had trouble getting the hang of it.

Ron Niederwerfer testified that he works out of the South Windsor Post Office as a regular letter carrier; that he has worked for the Postal Service for over twenty years and has served as a Union steward for ten years; but, that he has covered the UPO as the Union steward only since early September 2013.

Steward Niederwerfer further testified that, while doing some research on TACS, he saw some "rings" for letter carriers at the Unionville Post Office that were not done by the letter carrier; that, instead of the letter carrier's ID number showing for the ring, the record showed another ID number; that he spoke with the letter carriers about what he had learned; that the rings occurred in various circumstances, but was often for an "office pivot;" and, that he later learned that the ID numbers he saw were for the Unionville supervisor, Rick McSherry, and the postmaster, Rene McGee.

On September 18, 2013, the Union filed Branch Grievance Number 13-06985-03, concerning the Unionville Post Office. Steward Niederwerfer requested from Management the TACS rings and swipes at the UPO for the year. No Formal A meeting was scheduled or held. On October 7, the Step B Team received the case file, indicating that no Formal Step A meeting had been held and containing no management contentions. The issue grieved was: "Did management violate the National Agreement, Articles 1, 3, 5, 7 and 8, when it performs city carrier work by making time card swipes in lieu of city carriers doing the work themselves and if so, what is the proper remedy?" Included in the case file was a statement by Steward Niederwerfer about Management's failure to schedule a Formal Step A, as required by Article

15.2. On October 8, the Step B Team issued its decision, stating: "The Dispute Resolution Team (DRT) has resolved this grievance. Management will only perform craft work in conformance with Article 1.6 of the National Agreement, which is provided below." The Step B Decision reminded Management of their responsibility to schedule a Formal Step A meeting, that failure to do so violated the National Agreement, and that it was expected that Management would comply in the future. With respect to the merits of the grievance, the Step B Decision stated:

The union claims that supervisors are making the time card swipes of the city letter carriers. While swiping the time cards is part of a carrier's normal daily routine, the union has failed to provide any documentation that supports this is being done or for what reason. While a violation of the National Agreement has not been proven by the union, the Step B Team has determined the best course of action is to remind management of the language contained in Article 1.6 of the National Agreement.

NALC Steward Ron Niederwerfer testified that the Step B Team should have remanded the grievance for a Formal Step A Meeting and that he had expected a remand, since in all his prior cases where no Formal Step A Meeting was scheduled, the case had been remanded by the Step B Team.

Postmaster McGee testified that, when she received the Step B Decision, she understood it to mean that she needed to "cease and desist" from doing rings for the letter carriers; that, on October 13, 2013, she told all the Letter Carriers that they had to make their own "swipes" from now on and that they would be disciplined if they failed to do so; and, that there had been few problems with swipes since then.

According to Steward Niederwerfer's testimony, when he received the hundreds of pages of TACS swipe/ring records for 2013 from Supervisor McSherry, he painstakingly reviewed the records and developed a list of the swipes/rings done for letter carriers by Postmaster McGee and Supervisor McSherry, based on their employee ID numbers. The eleven-page list shows the date for each swipe and the iD number. There are a total of 586 swipes from January through September 2013, and all were done by Postmaster McGee until July, when Supervisor McSherry came on board. Steward Niederwerfer also testified that most of the time-card swipes were for "pivots" to cover additional work that needed to be done. Postmaster McGee also testified that the swipes involved "pivots."

On October 22, 2013, the Union filed Branch Grievance Number 13-06985-12, the grievance at issue here, and Steward Niederwerfer and Postmaster McGee met at Informal A. Postmaster McGee testified that the meeting was short and the grievance was "automatically bumped to the next level." On November 15, Steward Niederwerfer and Postmaster McGee

met again, at Formal Step A. Postmaster McGee testified that Steward Niederwerfer had a handwritten "TACS everything" report that Supervisor McSherry had provided the Union recently, in response to Steward Niederwerfer's September request; that Steward Niederwerfer stated that the report showed swipes done by Management in 2013; and, that she acknowledged that the two ID numbers on the sheet were hers and Supervisor McSherry's. The Step B Team received the grievance file on November 25 and issued its Step B Decision on November 27. The issue grieved was: "Should Unionville City Carriers receive pay for management having made time card swipes/TAC moves in lieu of having instructed those carriers to have one the work themselves, is it a violation of Articles 1, 3, 5, 7 and 8 and if so, what is the proper remedy?" The Step B Team decided to declare an impasse, and the Union moved the grievance to arbitration.

Positions of the Parties

Management

The Postal Service takes the position that the grievance is not arbitrable as the issue has been grieved previously and resolved by the B Team on October 8, 2013, before the filing of the grievance here. Citing JCAM Article 15, the Service contends that a Step B decision sets precedent in the installation from which the grievance arose and is final and binding on the installation in subsequent disputes involving the same or similar issue. The Service argues further that the Union should not be allowed a "second bite at the apple" just because the Union is better prepared to contest the same issue here. In addition, the Service contends that the grievance is not arbitrable under the doctrine of *res judicata*.

With respect to the merits, if the grievance is granted, the Service contends that the remedy should be limited to a cease-and-desist order, since there is insufficient evidence to determine specifically who should be paid how much for what for monetary relief to be awarded.

Union

With respect to arbitrability, the Union argues that the doctrine of *res judicata* does not apply here because the doctrine refers to litigated and arbitrated issues only and the Union has yet to have its day in court on this issue. The Union contends that the issue was not adjudicated in the earlier grievance, as Management had not yet provided information requested by the Union that the Union needed to present its case and, as a result, there was no evidence for the Step B Team to consider in the first case.

With respect to the merits, the Union contends that supervisors and the Postmaster routinely performed carrier work, by manually inputting carrier time punches into the TACS or payroll system over a prolonged period of time. The Union argues that Management unjustly enriched itself by taking this work away from the Unionville letter carriers and should make whole the affected letter carriers.

Discussion

With respect to the initial issue before me, I conclude that the grievance here is arbitrable for the following reasons. First, I am not persuaded by the Service's argument that JCAM 15-8 bars the arbitration of the present grievance. JCAM 15-8 states that a Step B Decision establishes precedent in the installation from which the grievance arose and that "precedent" means that the Step B Decision will be relied upon in dealing with subsequent similar cases. However, although the Step B Decision in 13-06085-03 designated the grievance as "resolved," the decision did not address the issue raised and could not do so, since Management had not yet responded to the Union's request for the "TACS everything" records for 2013, Management had not scheduled a Formal Step A meeting, there were no management position or contentions in the grievance file, and the grievance file lacked any other basis for addressing the grievance on the merits. Rather, while acknowledging that swiping time cards was part of a carrier's normal daily routine, the Decision stated that the Union had "failed to provide any documentation that supports this being done or for what reason."

But, it was through no fault of the Union that no relevant documentation was in the grievance file. To the contrary, Steward Niederwerfer had done what he could, consistent with Article 15 and Article 31 (Union-Management Cooperation), to pursue the grievance through the steps of the grievance procedure and obtain information necessary for processing this specific grievance. If there had been a Formal Step A meeting or Management had provided the records requested by the Union, Postmaster McGee would have admitted that she had made swipes/rings for letter carriers that should have been performed by the letter carriers, as she did in her testimony at the hearing and by treating the Step B Decision in the first grievance as a cease-and-desist order, and her admission and explanation would have been part of the grievance file for the Step B Team's consideration. Instead, the Step B Team had only the Form 8190, and Steward Niederwerfer's written statement about Management's failure to schedule a Formal Step A Meeting, to consider in making its determination. While the Step B Decision acknowledges Steward Niederwerfer's written statement, reminds Management of its

responsibility to schedule a Formal Step A meeting, and states that the failure to do so violates the National Agreement and "it is expected management will abide with this language in the future," the Step B Team then turns to the merits of the case, with virtually nothing in the grievance file related to the merits of the case to consider, finds that no violation had been proven, and, nevertheless, reminds Management that it "will only perform craft work in accordance with Article 1.6 of the National Agreement."

In effect, the Step B Team was saying that all they could conclude from the grievance file was that Management had failed to schedule a Formal A Meeting, in violation of Article 15.2; and, that they had no basis for making any factual findings on the specific grievance. It is not clear from the record whether or not the Step B Team considered agreeing "to return the grievance to the Formal Step A level for full development of all facts and further consideration at that level," pursuant to Article 15.2 Step B:(b), as that would seem to have been an appropriate action under the circumstances. It would seem especially appropriate in this case, since there was no Formal A Meeting here and grievances in the past without Formal A Meetings had routinely been remanded to Formal Step A, according to Steward Niederwerfer's unrebutted testimony. As the Step B Decision in the earlier grievance was based on a very limited development of facts and contentions, due to Management's failure to fulfill its responsibilities under Articles 15 and 31, I find that the Step B Decision did not establish precedent that can be "relied upon in dealing with subsequent similar cases," under JCAM 15-8; and, conclude that JCAM 15-8 does not bar the arbitration of the grievance here.

For similar reasons, I am not persuaded by Management's argument that the grievance is not arbitrable, under the doctrine of *res judicata*. The application of the doctrine requires a showing that the matter at issue has been litigated and decided on the merits, previously. Here, however, the issue in the earlier grievance was never "litigated" or decided on the merits. Rather, as noted above, the grievance was resolved by the Step B Team on the very limited documents that were included in the grievance file, without benefit of considering any arguments or evidence.

I now turn to the merits of this grievance. I will address the alleged contract violation first, since the first part of the issue statement deals with remedy and the remedy issue is reached only if a violation is found. The evidence is overwhelming and undisputed that Postmaster McGee and Supervisor McSherry made time card swipes/rings for letter carriers at the UPO, in violation of Article 1.6. Postmaster McGee acknowledged this in her testimony at the hearing and had done so previously by implication, when she took steps to end the practice upon receiving the Step B Decision in the earlier grievance. Therefore, I conclude that

Management violated Article 1.6 by making TACS rings/swipes for UPO letter carriers during the period from January to September 2013.

However, it is far from clear how often, to whom, and why this happened. While "Exhibit C" in the grievance file lists 586 separate management swipes/rings from January to September 2013, only the date and the manager/supervisor's ID number are shown. The specific letter carrier affected by any of these 586 instances is not evident from this exhibit, and none of the affected employees testified at the hearing. Moreover, as clearly stated in Handbook PO-209 4-4.2 Clock Rings, employees and Management share responsibility in the area of time-keeping and ensuring the accuracy of the TACS and Clock Ring Error Report, and it is not apparent from the record whether any (or many or most) of these 586 instances were due to Postmaster McGee making corrections to ensure the accuracy of the entries in the time-keeping records, as was her daily responsibility.

Also, the bulk of the 586 instances occurred in May through September, and especially in July and August, the prime vacation months. This is not surprising, since the UPO is a small post office, there was employee turnover just before and during this time, the new employees required training, a supervisor was needed and finally arrived in July, and the letter carriers were regularly maxing out on overtime to cover vacancies and absences. In these hectic circumstances, it is also unsurprising that some of the letter carriers may have been lax or reluctant about taking the time to swipe their card in another part of the building where the time clock was, when switching from their case to another carrier's case, as they already had so much to do. There is nothing in the record to support the Union's contention that Management was deliberately doing clock rings and time-card swipes to save an hour of overtime each week. To the contrary, it was the Postmaster's unrebutted testimony that she did the entries and swipes only when a letter carrier had not done so or had done so inaccurately, so that the time-keeping records were as accurate as possible. The Postmaster's testimony that, after receiving the Step B Decision for the earlier grievance in October, she told the letter carriers that they would have to do their own swipes from now on or face discipline, implied that Postmaster McGee had been doing letter carrier swipes by default up until then, because it would not have gotten done otherwise.

For the foregoing reasons, it would be very difficult to determine how many hours of work, if any, the UPO letter carriers lost as a result of Management's violation of Article 1.6. Moreover, as the Union estimated that, in each instance, it would have taken a letter carrier about one minute to perform the swipe/ring and as there are the many considerations listed above that may have reduced the 586 count considerably, I conclude that the injury to the UPO

letter carriers here is too speculative to grant any monetary relief. Therefore, I conclude that the Unionville City Carriers should not receive pay for management having made time card swipes/TAC moves in lieu of having instructed those carriers to have done the work themselves, and I deny the Union's request for such a make-whole remedy. As the remedy, Management shall cease and desist from making time card swipes/TAC moves for letter carriers; and, shall conduct a service talk for letter carriers, informing them of their obligation to make their own clock rings and time-card swipes and how to perform these duties.

Accordingly, the grievance is granted, as Management violated Article 1.6, but the Union's request for a make-whole remedy is denied.

AWARD

The grievance is granted.

The remedy is:

1. Management shall cease and desist from making time card swipes/TAC moves for letter carriers; and,
2. Management shall conduct a service talk for all UPO letter carriers, informing them of their obligation to make their own clock rings and time-card swipes and how to perform these duties.



James R. Collins