

C#09464

U. S. POSTAL SERVICE/NALC NATIONAL AGREEMENT
REGULAR ARBITRATION PANEL

In the Matter of the Arbitration Between:)
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UNITED STATES POSTAL SERVICE)
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-and-)
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NATIONAL ASSOCIATION OF LETTER CARRIERS)
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)
Cs: E7N-2H-D 17295 - Burton - L/Carrier)
E7N-2H-D 17979 - Burton - L/Carrier)
Ninety Six, South Carolina)
)

Before: Robert F. Condon - Arbitrator

Appearances: For the U. S. Postal Service

Carl J. Kelly - Advocate
Doctor Randy Robinson - Witness
Greer Shafer - Postal Inspector
J. M. Farnham - PTF Clerk
Harold Van Hutchins - Postmaster -
Raymond Ezell -Postal Inspector
Larry Florke - Clerk-Steno

For the N. A. L. C.

D. Robert Johnson - Advocate
Joe Black - Witness -Friend
Carl Riley - Rural Carrier
George Watts - Letter Carrier
James Burton - Grievant
Sgt. Ronnie Carroll - Nat'l Guard

Date of Hearing: September 29, 1989

Place of Hearing: Postmaster's Office,
 Ninety Six, South Carolina

Award: The grievances are not arbitrable.

Date of Award: October 23, 1989


ROBERT F. CONDON, Arbitrator

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In accordance with the provisions of the collective bargaining agreement between the parties, a hearing was held on September 29, 1989 in the Postmaster's Office, of the Post Office, Ninety Six, South Carolina. Both parties were given full and fair opportunity to be heard, to present evidence and argument, and to examine and cross-examine sworn witnesses. At the conclusion of the hearing, the parties requested, and were granted the privilege of filing closing briefs. That request was approved by the Arbitrator and the briefs

were received October 18, 1989.

At the onset, Management raised the matter of arbitrability in this case. The original grievance was submitted by George Watts, who is not employed at the Ninety Six Post Office. On that basis, it is necessary to respond to that claim. Therefore, I find it necessary to approach the following:

ISSUE

Is the case arbitrable? If not, what shall be the remedy?

POSITION OF THE SERVICE

There are two (2) possibilities --- either the Union representative, George Watts, who filed the grievance in behalf of the Grievant, was certified in writing to the Region as the outside Shop Steward or he was not. Mr. Watts admits he was not. Mr. Watts claimed ignorance of Article 17.2.D. As "ignorance of the law is no excuse," ignorance of a labor contract is similarly not a defense. Employees, as beneficiaries of a collective bargaining agreement, are generally held to be responsible for knowledge of its content. Surely, a Branch President is responsible for knowing the contents of the National Agreement and must be held so. Mr. Watts and the NALC are bound to abide by the terms and conditions of the contract. It would be patently unfair to the Postal Service for the Arbitrator to hold the language of Article 17.2.D. meaningless. The Unions often cite procedural irregularities in their grievances so that the case will be sustained because the Postal Service failed to conduct a fair and impartial investigation, failed to obtain higher level concurrence on suspensions and discharge, failed to give a 30-day notice on discharges, etc. The contract is negotiated on behalf of

the employer as well as the unions. It is perfectly clear language in Article 17.2.D that representatives not on the employer's payroll shall be entitled to perform the functions of a steward provided such representatives are certified in writing to the employer at the Regional level and providing such representatives act in lieu of stewards designated under the provisions of 2.A or 2.B. It is also perfectly clear that Watts was not certified in writing as an outside shop steward. Therefore, there is nothing which can proceed, from the first step onward through the subsequent steps of the grievance procedure of which arbitration is the final step. There is no argument from the Union that Watts was not certified and, even though this issue was brought up at Step 2, Watts still declined to get certification in writing. Watts testified at the hearing that he had filed grievances at the Ninety Six Post Office on at least one other occasion. Mr. Watts was given time, between when he completed his original testimony and the end of the hearing, to travel to his assigned office in Greenwood, S. C., to obtain copies of the alleged grievance he claims to have filed in Ninety Six. At the conclusion of the hearing, he again testified and reported that he was unable to produce any documentation in that regard. It is Management's position that assuming a grievance had been filed, the grievance Watts mentioned was one over which he did not have jurisdiction since he was not certified as a Shop Steward for the Letter Carriers of the Ninety Six Post Office.

To supplement their argument as to arbitrability, Management has included in its brief, copies of several arbitration awards issued by Arbitrators J. Fred Holly, Elvis C. Stephens, Carlton Snow, and

Bernie Cushman, who are all considered to be quite learned individuals and highly respected arbitrators. Their opinions in this regard have been duly noted.

POSITION OF THE UNION

The Union contends this case is arbitrable because of several areas which were revealed during the grievance procedure and at the arbitration hearing. It is obvious from the onset of the grievance, that the Postmaster was communicating with the Steward as if he recognized him as such. (See Joint Exhibit 2, pages 5,6,7,8, and 9). At no place during the procedure did Management hint that they were dealing with an improperly designated steward. This issue was only raised subsequent to the filing of Local Grievance 88-7 which was the appeal decision letter.

The Steward testified as to having handled grievances in Ninety Six with the former Postmaster. He even went so far as to describe what the cases were about; A PTF Letter Carrier who was concerned about the distribution of hours and who should do specific work functions.

In addition, it was established that the Steward had been permitted to see the video tape (Investigative Memo - Exhibit 6), during the grievance investigation. Had Management not accepted George Watts as the Steward, it is inconceivable to think that they would have allowed him to see the video. The Step 2 designee (C.J.Kelly), said at the hearing that he had offered to let Mr. Watts copy the tape.

Based on these facts, the Union submits that this case is arbitrable, as provided for in the National Agreement.

DISCUSSION AND FINDINGS

The Arbitrator has reviewed the testimony, evidence and other Arbitrators' awards submitted by both parties. Based on everything considered, it is my determination that the Union has not properly notified Management that George Watts, who is employed in a Post Office other than Ninety Six, South Carolina, is to be considered as Shop Steward for that office. If the parties went to the extent of negotiating a complete section regarding Appointment of Stewards into the collective bargaining agreement, then that section should be employed. Therefore, the grievances were not properly submitted in behalf of the Grievant. Since the Union has failed to abide by the provisions of the National Agreement, it is my determination to issue the following:

AWARD

The grievances are not arbitrable.

Although I have determined that the grievances are not arbitrable, I have reviewed the merits of this case, as presented at the hearing. It appears quite evident that the Grievant was, indeed, conducting business in his air conditioning and small motor repair shop while on paid sick leave from the Postal Service. Even if he had confined himself to telephone calls and clerical work, he was still performing duties for remuneration. If he had reported for duty at the Post Office, he could have been assigned to duties other than a Letter Carrier walking route. That he failed to do. Instead,

he was involved in delivering an air conditioner and measuring products for customers, at the very least.

His activities while at Guard Camp are only known to the Grievant. However, he did testify that he was able to attempt to run in the 2-mile exercise required of the Guard members. At the hearing, he claims to have been able to run for approximately 75 yards which is an indication that he did have some ability to be mobile. However, he did not see fit to use that mobility to perform any Postal Service duties.

Based on the information furnished and testified to, it would have been my determination to deny the grievances on the basis of their merits.



ROBERT F. CONDON, Arbitrator

Manalapan, New Jersey
October 23, 1989