

REGULAR ARBITRATION PANEL

In the Matter of Arbitration)	
)	Grievant: Kenneth Honore
Between)	
)	Post Office: New Haven, CT
United States Postal Service)	
)	Case No: B11N4BC14190207
and)	
)	Union No: 1938014EH
National Association of)	
Letter Carriers, AFL-CIO)	DRT # 14-310515

Before: EILEEN A. CENCI

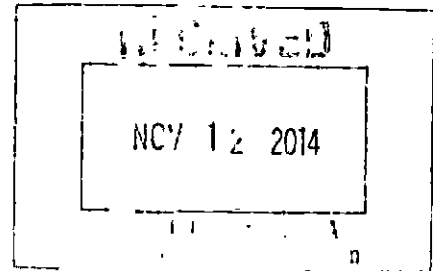
Appearances:

For United States Postal Service: Scott Duell

For National Association of Letter Carriers: Vincent Mase

Place of Hearing: New Haven, CT

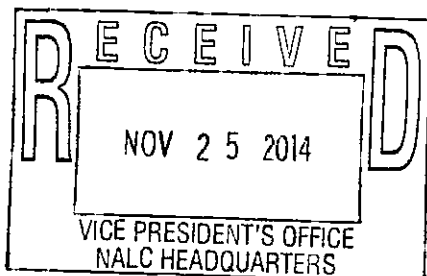
Date of Hearing: September 22, 2014



AWARD SUMMARY: Management did not violate Articles 15 and 17 of the national Agreement when they failed to provide the grievant, who is a steward and Formal Step A representative, with sufficient union time on the clock to complete his contentions on the day of the Formal Step A meeting. The grievant's request was not reasonable and even if the time had been granted the strict requirements of Article 15.2(f) could not have been met. The grievance is therefore denied.

Date of Award: November 7, 2014

Regular Regional Arbitration Panel



Eileen A Cenci

Eileen A. Cenci

OPINION

STATEMENT OF PROCEEDINGS:

This matter was arbitrated pursuant to the grievance and arbitration provisions of a collective bargaining agreement (National Agreement) between the United States Postal Service (Service) and the National Association of Letter Carriers (NALC or Union). A hearing was held before me on September 22, 2014 in New Haven, Connecticut. The parties appeared and were given a full and fair opportunity to be heard, to present evidence and argument and to examine and cross-examine witnesses. The Union called one witness who testified under oath. At the conclusion of the testimony the parties gave oral closing arguments and the record was closed on the day of hearing. The arbitrator subsequently requested and received an extension until November 7, 2014 to render the decision.

ISSUE:

The parties agreed to the following issue statement:

Did management violate Articles 15 and 17 of the national Agreement when they failed to provide the grievant, who is a steward and Formal Step A representative, with sufficient union time on the clock to complete his contentions on the day of the Formal Step A meeting?

If so, what shall the remedy be?

FACTS:

This case concerns the denial of union time requested by Steward Kenneth Honore on May 8, 2014. On that day Mr. Honore, who works in East Haven, began his tour at approximately 8:30 a.m. and would normally have ended it at 5:00 p.m. Steward Honore was the Union Formal Step A representative and there were five grievances on which he had to meet that day since he was non-scheduled for the following three days and the grievance deadlines were approaching. Mr. Honore had not yet heard from management Formal A representative Derek Hudson as to when they would meet on the five grievances. On the morning of May 8, 2014 Mr. Honore spoke to Interim Manager Laurie Collins and explained that the time limits on the

grievances were running out and he was going to need time to write the contentions and move the grievances along. Manager Collins later informed the grievant that Mr. Hudson would come to the office to meet with him at 4:00 p.m. that day.

Mr. Honore returned to the office at 4:00 but Mr. Hudson did not arrive until 5:00 p.m. The two then met on the five grievances at Formal Step A for approximately one hour until 6:00 p.m., but were unable to resolve any of the grievances. Steward Honore then informed Supervisor Marcia Perkins that he would need approximately five hours to finish writing his contentions for the grievances. Supervisor Perkins informed the grievant that he could only remain on the clock until 7:00 p.m. After that time he would have been on penalty overtime. At 6:46 p.m. Mr. Honore gave Supervisor Perkins a letter notifying her that he would have no choice but to write his contentions in a non-pay status that night and file a separate grievance seeking payment for the time spent on union business. Ms. Perkins responded with a letter informing the grievant that he would be afforded additional union time on Saturday, May 10, 2014. The letter further stated that it would not make good business sense to allow him to work penalty overtime to complete his grievance contentions. When Supervisor Perkins handed Mr. Honore the letter he did not inform her that he was not scheduled to work on Saturday. Saturday, May 10, 2014 was also the day of the annual food drive. Mr. Honore did not recall whether he was called in to work that day. The day of the food drive is normally very busy so if he had been called in to work it would have been difficult to take time for union business.

The grievant went to the North Haven union office to work on the grievance from 4:30 p.m. to 11:30 p.m. on May 8, 2014. The Union filed a grievance over the denial of Union time, seeking a cease and desist order and payment to the grievant for four hours at the penalty overtime rate. The grievance could not be resolved at the lower levels of the grievance process and was appealed to arbitration.

Steward Honore testified at arbitration that he had not written the Union contentions for the five grievances prior to the Formal Step A meeting because he considers doing so a time-wasting practice. He always hopes to resolve grievances at the Formal Step A meeting and writes his contentions after the meeting only if he has been unable to reach a settlement. Mr. Hudson refused to sign the Formal A grievance form for management because he had not yet received the Union's contentions. Steward Honore did not sign the form because Mr. Hudson

had not signed it. Mr. Hudson did not give Steward Honore management's contentions at the Formal Step A meeting.

Mr. Honore testified that he asked for four additional hours of union time because he was unable to complete the contentions for five grievances between 6:00 p.m. when the Formal A meeting ended and 7:00 p.m. when he was told to be off the clock. No one in management asked him to agree to an extension of the Article 15.2(f) requirement that the form be completed the same day as the meeting.

Mr. Honore testified that there is a union office in the building where he was working and he could have worked in the steward's office until 11:00 p.m. There would have been people who could have let him out of the building at that time.

CONTRACT:

Article 15 Grievance-Arbitration Procedure

Section 2 Grievance Procedure—Steps

Formal Step A

...

(d) At the meeting the Union representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Articles 17 and 31...

(f) The Formal Step A decision is to be made and the Joint Step A Grievance Form completed the day of the meeting, unless the time frame is mutually extended. The Union may appeal an impasse to Step B within seven (7) days of the date of the decision.

JOINT CONTRACT ADMINISTRATION MANUAL (JCAM)

15.2 Formal Step A (f)

Formal Step A Decision. The parties must make the Formal Step A decision and complete the joint Step A Grievance Form on the day of the meeting, unless they agree to extend the time limit...

Article 17 Representation

...

Section 3. Rights of Stewards

...

The steward, chief steward or other Union representative properly certified in accordance with Section 2 above may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied.

JOINT CONTRACT ADMINISTRATION MANUAL (JCAM)

Steward Rights. Article 17.3 & 17.4 establish several steward rights:

- The right to investigate and adjust grievances and problems that may become grievances;
- The right to paid time to conduct those activities;

...

POSITIONS OF THE PARTIES:

NATIONAL ASSOCIATION OF LETTER CARRIERS (UNION)

Article 15.2(f) requires that the Formal A decision and the Joint Step A grievance form be completed on the day of the meeting. The steward had no choice but to comply with the strict contract language and complete the Formal A forms on the day in question. The timelines could only have been extended by mutual agreement. Supervisor Perkins had no authority to extend those guidelines. Only management Formal A representative Derek Hudson could have agreed to an extension and he left without doing so. Moreover, any extension has to be mutual and Mr. Honore would not have been required to agree to an extension even if management had offered one.

Any argument that the grievant violated Article 15.2(d) by not writing his grievance contentions prior to the meeting should be rejected as new argument since it was never raised at the lower levels.

Although management's B Team representative focused on Article 17.3, this case solely concerns Article 15.2. The problem did not occur during the investigation phase of the grievances. Moreover, the issue had nothing to do with the time limits of an appeal to the B Team but was about the obligation to complete the Formal A forms on the day of hearing.

Management offered the grievant additional Union time on Saturday, May 10, 2014 when he had a non-scheduled day and was unavailable to work on union business. No additional time after the day of the Formal A meeting would have been helpful in any case, since the decision had to be made and the grievance form signed on the day of the meeting.

The Union asks that the grievance be sustained. Management should be ordered to cease and desist from violating Article 15.2(f) in the manner that occurred in this case. The grievant should be paid four hours at the penalty overtime rate for the time he worked off the clock on May 8, 2014 to complete his grievance contentions.

UNITED STATES POSTAL SERVICE (SERVICE)

The Service maintains that the Union has failed to meet its burden of proving a contract violation. Stewards do not have an unconditional right to complete grievances on the clock.

Management granted the grievant two hours on overtime to meet at Formal Step A and complete the paperwork on the day in question. It was not unreasonable to deny him the right to finish the grievances on penalty overtime. In addition granting the grievant's request would have required other employees to remain in the building and keep it open until 11:00 p.m. At the time the grievant made his request, almost 7:00 p.m., management was in the process of closing the building for the day. Management is not required to extend business hours in order to provide union time to a steward.

The grievant should have completed his grievance contentions prior to the Formal Step A meeting. The parties are required to make a full and detailed statement of their facts and arguments at that level. It was unreasonable for the grievant not to write his contentions prior to the meeting, then expect five additional hours of overtime to complete that task on the day of the Formal A meeting.

The Service asks that the grievance be denied.

DISCUSSION:

The grievant bases his argument on a strict interpretation of Article 15.2(f), which requires that the Formal A decision be made and the grievance form completed on the day of hearing. In his view, the contract provision supports his claim that management was required to

give him five additional hours of union time after the Formal Step A meeting, four of it at the penalty overtime rate, so that he could complete his grievance contentions on the same day as the meeting. The grievant's reliance on Article 15.2(f) is misplaced, however.

At the time Mr. Honore requested four additional hours of union time beginning at 7:00 p.m. on May 8, 2014, the management Formal A representative had already left the building without signing the grievance form. Even if Mr. Honore had completed his grievance contentions and signed the form before midnight on the day of the hearing, the strict requirements of Article 15.2(f) could not have been met because the management Formal A representative was no longer available to sign the form on the same day the meeting had occurred. No purpose would therefore have been served by granting the grievant four more hours of overtime at the penalty rate to complete his grievance contentions.

The only alternative available to the parties as of 6:00 p.m. on May 8, 2014 to meet the requirements of Article 15.2(f) was for them to mutually agree to an extension. When Mr. Hudson refused to sign the form until the Union wrote its contentions, but another manager subsequently offered the grievant union time at a later date to complete those contentions, management was implicitly agreeing to extend the timeline under Article 15.2(f). While an extension under that provision must be mutual and the Union was not compelled to agree to one, a mutual extension was the only option that could have brought about strict compliance with Article 15.2(f) as of 6:00 p.m. on May 8, 2014 when Mr. Hudson left the building without finalizing the decision and completing the grievance form. Since the only purpose of granting the grievant four additional hours of union time at the penalty rate could not have been accomplished even if the request had been granted, it was not unreasonable for management to deny the request and offer him union time at a later date.

Having concluded that management was not required to grant Mr. Honore four hours of Union time at the penalty rate beginning at 7:00 p.m. on May 8, 2014, this decision does not turn on the question of whether it was unreasonable for the grievant to attend the Formal Step A meeting without having completed his written contentions, and expect to be granted sufficient time to complete those contentions after the meeting. In general, however, this seems like an ill-advised practice. Formal Step A meetings are likely to be more productive if both parties are fully prepared, with written contentions as well as documentation, at the time they meet.

Moreover, if the Formal A decision cannot be made nor the grievance form signed until the contentions have been written, it seems risky to count on sufficient union time after the Formal A meeting to complete that amount of paperwork the same day in order to comply with the requirements of Article 15.2(f). Although management cannot unreasonably deny requests for union time, it has the right to deny such requests when it is reasonable to do so on the basis of business conditions or operational needs, and to offer alternative union time that better meets efficiency needs. It therefore seems inadvisable for a union steward to position himself so that he needs extensive Union time after a Formal A meeting in order to complete the grievance contentions the same day in order to meet the requirements of Article 15.2(f).