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James P. Martin
Impartial Arbitrator

ISSUE

What remedy, if any, is appropriate for the contractual violation committed by local management in refusing to provide 1723's to the Union prior to bargaining unit employees serving as 204B supervisors?

NATURE OF CASE

From 1984 on, the Union was unable to persuade, require or force local management to comply with the Contract in giving it Forms 1723's when a Carrier was acting as a 204b Supervisor. Starting in '86', grievances were filed, each of which was cheerfully answered by Management saying, in effect, "don't worry, we'll do it next time." For no known reason, Management consistently refused to comply with the contractual requirement that the Union be notified of a 204b appointment. At the Hearing, the violations were acknowledged by the Postal Service, but the argument was made that no remedy was appropriate. The Union asked for a fine to be imposed upon Management in the amount of \$2,000.00 for the grievance filed on August 12th, and for a fine of \$4,000.00 to be imposed for

the violation in the grievance dated September 27, 1988. The payment was to be made to the local Union. Management had a string of reasons why a remedy was inappropriate. There was no penalty provided in the Agreement. It was inappropriate to give a remedy to the local Union, since any harm which might have been done was done to individual employees, and none was ever shown. Management solved the problem by removing the Postmaster, demoting him, and installing a Postmaster who has since his installation complied with the Agreement. No harm was done to any employee, and therefore no remedy is appropriate on that basis. Finally, the Union claimed that it wanted the 1723's in order to determine whether a 204b supervisor was doing bargaining unit work, but it was unnecessary, since the unit is small, and all employees knew what was happening with all other employees. Additionally, the 204b supervisor was normally in street clothes, rather than in his Carrier uniform.

The Union's petition for a monetary remedy was to impress upon Management the fact that the Contract was to be complied with, not ignored. In the absence of a painful experience, Management could continue to ignore the Agreement without fear of penalty. A prospective penalty would

be inappropriate, because prospective violations would be handled by future grievances, and the grievances here involved related to blatant violations of the Agreement in the past. No evidence was presented to support Management's claim that the previous Postmaster was demoted and transferred because of the actions complained of in these grievances, and the supervisor directly responsible for providing the Union with the 1723's, Mr. Brady, was still in his same position at the Laramie Post Office. The fine against the Postal Service was the only way in which Management would be convinced that it could violate the Agreement only ^{at} its peril.

DISCUSSION

The callousness of local Management's actions in this case defy description. In six to eight grievances, filed complaining of the lack of 1723's, local Management blithely allowed the grievances, and then contemptuously ignored their own commitments. Testimony was offered that the Union attempted to encourage compliance, then went up the chain of command as high as the Field Division General Manager without any success at all. While the

appointment of the new Postmaster appears to bode well for the future, with many months passing without further problems, these grievances relate to violations which took place under Mr. Brady's supervision, and Mr. Brady is still in the same position at the Laramie Post Office. Union fear that the violations might resume is not without foundation.

The remedy requested, however, the imposition of a fine upon Management, is beyond my jurisdiction. Management's contumacious refusal to honor the Contract, and the grievance process, demands a remedy, however. There is an appropriate one, created by Management's own obstinate posture.

The Union is charged with the responsibility for monitoring compliance with the Contract, and protecting its members from, among other things, the taking of their work hours by Management. The 1723's enable the Union to do this. When a Carrier is appointed 204b supervisor, he is not to perform bargaining unit work. When Management refuses to tell the Union when a Carrier is acting as a 204b, it is impossible for the Union to monitor the work performed by that supervisor. Granted, Laramie is not Chicago or Detroit, and there are far fewer cracks between

which misassignments can fall. Additionally, the Postal Service claimed that 204b's were in street clothes, and could be easily identified in relation to the Carriers in uniform. However, the Contract does not require the Union to hire a detective to check on what is being done; the Contract requires Management to tell the Union up front who the temporary supervisors will be, so that bargaining unit work will not be done by them, to the detriment of the part time flexibles. At Laramie, there was no evidence presented that 204b Supervisors did bargaining unit work, but Management's admitted obstructionism prevented the Union from assuring that this was so. Any bargaining unit work done by the 204b supervisor deprived a PTF of the opportunity to do that same work, on the clock and to his financial advantage. Since the actions of Management prevented the Union from confirming that supervisors did not do bargaining unit work, for the purposes of this case, the assumption will be made that the supervisors did indeed do bargaining unit work, and, absent any showing to the contrary, that they spent eight hours of their tour doing it. This would have the effect of depriving part time flexibles of eight hours of work per Tour, when the 204b supervisor was working. Those PTF Carriers are

entitled to pay for the hours they lost on the assumption that the 204b supervisor did bargaining unit work, and deprived them of the hours they would otherwise have received.

The parties stipulated that there were seven sets of dates upon which 204b's were utilized without 1723's being submitted to the Union, four Step Three Settlements from August 11, 1986 through July 19, 1988, and one Step Four Settlement. Additionally, there were two periods which are covered by the specific grievances here involved. For each hour worked by a 204b on those seven occasions, be it a day, a week, or more, the most senior PTF on that Tour who worked less than eight hours is to be made whole for the difference between what he worked and eight hours at straight time, up to the number of hours worked by the 204b. If there are hours left over worked by the 204b, then the next most senior Carrier on that Tour is to be made whole in the same manner.

Whether this Award constitutes unjust enrichment of those PTF's or not can not be determined, because of local Management's intransigence in complying with the contractual provisions which would make such determination possible. As to the Union's request for a fine, that is denied.