

C#01181

ARBITRATION AWARD

In the Matter of the Arbitration)
)
 Between) CASE NO. C8N-4E-D 34803
 UNITED STATES POSTAL SERVICE)
 Cleveland, Ohio) ALBERT A. EPSTEIN
) ARBITRATOR
 And)
)
 NATIONAL ASSOCIATION OF LETTER)
CARRIERS, BRANCH 40)

CARLOS CLOUD TERMINATION GRIEVANCE

THE PROCEEDINGS

The above parties, unable to resolve a grievance filed by employee Carlos Cloud with reference to his termination by the Postal Service on April 17, 1981, submitted the matter to the undersigned for arbitration under the terms of their labor agreement.

A hearing on the matter was held at the Main Post Office in Cleveland, Ohio, on February 4, 1982. Both parties were represented and fully heard, testimony and evidence were received and both parties made oral closing arguments.

APPEARANCES

FOR THE UNION:

Mr. Jack N. Grab President

Mr. Carlos Cloud Grievant

FOR THE POSTAL SERVICE:

Mr. Bernard King Labor Relations
Representative

Mr. Lee Ikner Manager, Labor
Relations

THE ISSUE

I. Was the grievance in this matter timely filed under the terms of the labor agreement between the parties?

II. If so, did the United States Postal Service have just cause for the termination of Carlos Cloud on April 17, 1981, under the terms of the labor agreement between the parties?

**PERTINENT LABOR AGREEMENT
PROVISIONS**

"ARTICLE XV

**GRIEVANCE-ARBITRATION
PROCEDURE**

"Section 2. Grievance Procedure--Steps

Step 1: (a) Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause. The employee, if he or she so desires, may be accompanied and represented by the employee's steward or a Union representative. The Union also may initiate a grievance at Step 1 within 14 days of the date the Union first became aware of (or reasonably should have become aware of) the facts giving rise to the grievance. In such case the participation of an individual grievant is not required. A Step 1 Union grievance may involve a complaint affecting more than one employee in the office."

"Section 3. Grievance Procedure--General

(b) The failure of the employee or the Union in Step 1, or the Union thereafter to meet the prescribed time limits of the Steps of this procedure, including arbitration, shall be considered as a waiver of the grievance. However, if the Employer fails to raise the issue of timeliness at Step 2, or at the step at which the employee or Union failed to meet the prescribed time limits, whichever is later, such objection in the processing of the grievance is waived."

"ARTICLE XVI
DISCIPLINE PROCEDURE

"In the administration of this Article, a basic principle shall be that discipline should be corrective in nature, rather than punitive. No employee may be disciplined or discharged except for just cause such as, but not limited to, insubordination, pilferage, intoxication (drugs or alcohol), incompetence, failure to perform work as requested, violation of the terms of this Agreement, or failure to observe safety rules and regulations. Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement, which could result in reinstatement and restitution, including back pay."

PERTINENT CITY DELIVERY
CARRIERS MANUAL PROVISIONS

"CHAPTER 1
GENERAL INFORMATION

"112.3 Security

.31 Protect all mail, money and equipment entrusted to your care."

"CHAPTER 8
VEHICLE OPERATIONS

"820 POSTAL SECURITY

823 When you anticipate that you will be out of the vehicle for 15-20 seconds (except for collec-

tion and delivery of mail which can be made in a matter of seconds), turn off the engine and remove the key.

"824 When you will be out of sight of the vehicle, turn off the engine, remove the key, and lock sliding door between truck body and cab and/or outside doors."

DISCUSSION AND OPINION

The grievant was a Carrier employed at Station C of the Cleveland, Ohio, Post Office, who was employed by the Postal Service since September, 1970. On January 29, 1981, at approximately 2:30 p.m. while working his assigned route No. 417, the grievant parked his leased vehicle, Plymouth Valore, License No. JPK 211, at 2640 Woodhill Avenue. He left the vehicle with the key in it to deliver some mail, during which time the vehicle was stolen. It contained two trays of mail with approximately 800 pieces. The grievant had requested auxiliary assistant or permission for overtime in a telephone call just prior to the call in which he reported the theft of his vehicle. He made no mention of the address at which the vehicle was stolen but the grievant acknowledged that when he parked the vehicle, he left the keys in the ignition with the

motor running and doors unlocked as he proceeded to deliver mail in the box at 2640 Woodhill, when someone ran past him, jumped into the vehicle and drove off.

The Postal Service notes that the grievant's discipline record contained a Letter of Warning on September 24, 1979, for failure to maintain a regular work schedule; a five day suspension on April 4, 1979, which was reduced to a two day suspension for failure to meet job responsibilities, and a seven day suspension on June 27, 1980, for failure to maintain a regular work schedule.

On March 11, 1981, the grievant was notified that he was being removed from the Postal Service for failure to protect Postal property. He did not initiate a grievance within the time limit of fourteen days set forth in Step 1 (a) of the grievance procedure in the labor agreement between the parties. The Union, through testimony by its Steward in Station C, indicates that when the proposed renewal notice was brought in to him, a grievance form was filled out but it was not filed because discussions took place between Union and management and the Union wanted to see what actual decision would be made before filing a grievance. The Union notes that four or five days after the removal letter, the Steward talked to Superintendent

of Delivery, Ware, who told him to hold off for awhile pending discussions with top management. The Union felt that the starting point for the running of the time limitation under these conditions should be the Letter of Decision, which was issued on April 6, 1981, by Joseph R. Epple, Manager of Employee Relations, at the Post Office. The actual grievance was filed on April 14, which was within the time limit if April 6 is considered as the triggering date.

The Postal Service, addressing itself to the timeliness issue, contends that the grievance was clearly untimely because it was filed approximately thirty-two days after the grievant first learned of the proposed removal, and it maintains that that was the date which should trigger the running of the time limitation. It is the contention of the Service that the time limitations in the grievance procedure are essential parts of the agreement between the parties to expedite grievance proceedings and it contends that arbitral precedents have upheld the Post Office's position on this point. Under the terms of Article XV, the failure of an employee or his Union in Step 1, or thereafter, to meet the prescribed time limits set forth in the grievance procedure, are considered as a waiver of the grievance. It notes that the Postal Service did not fail to

raise the issue of timeliness in Step 2 so that there can be no claim that such failure resulted in a waiver of the grievance by the Postal Service, and it notes, as a matter of fact, that the issue of timeliness was raised at both Steps 2 and 3 of the grievance-arbitration procedure.

Specifically, the Postal Service cites an arbitration award in Case No. AC-S-356-D, by Arbitrator Holly, in which the Arbitrator supports the Postal Service position and cites other arbitrators who support the Postal Service's position that the prescribed time limit is measured from the time the employee receives notice that discipline will be imposed and not measured from the time that the Letter of Decision is issued thereafter.

The Postal Service also cites an award by Arbitrator Morton C. Bernstein, who held that it was well established under the Postal Service labor agreements that the prescribed time limit is measured from the time the employee receives notice that discipline will be imposed under the terms of Article XV, and that this applies to all types of discipline including suspension, as well as discharge. The Postal Service also cites an award by Arbitrator Carl A. Warns, Jr., who supports

the position that the prescribed time limit is measured from the time the employee receives notice that discipline will be imposed, and it also cites a similar holding by Arbitrator Bernard Cushman. It is the contention by the Postal Service that the time limits in this case began to run when the grievant received the removal notice, which was issued on March 11, 1981, and that the filing of the grievance on April 14 is so far in excess of the fourteen day limit, set forth in Article XV, that the grievance must be dismissed as untimely.

With reference to the merits of the case, the Postal Service charges a clear violation of Carrier rules and regulations with reference to the protection of motor vehicles, and the Union, on the other hand, claims that the incident in which the vehicle was stolen involved a few minutes where the grievant turned toward the mail box and should not be considered as negligence on the part of the grievant or a violation by the grievant of Postal regulations.

I find that the position of the Postal Service with reference to the timeliness of the grievance is well taken. As indicated by the references cited above, there are a long series of arbitration awards holding that the time limitations for the

first step of the grievance procedure begin when the Notice of Removal is received by the employee, and not when the Letter of Decision is issued subsequent thereto. I find no support for the Union's contention that the Postal Service waived this time limitation or that the Union was lulled in the security because there was continuing discussion and the Union therefore felt that it should hold off on the filing of the grievance until the actual Letter of Decision was issued. The terms of the labor agreement between the parties set forth clearly the time limitations and provide that if these are violated, a grievance must be considered as withdrawn. The basic principle which determines the time when the limitation for the filing of grievances begins to run must certainly have been known to the Union, who deals with grievances constantly. If there was a slight delay because of some unforeseen circumstances, the time limitation might be considered waived but I find no basis for the Union's contention that it had the right to file a grievance within fourteen days of the Letter of Decision rather than within fourteen days of the original Notice of Removal. The Notice of Removal is, and has been held to be, the triggering factor in determining whether a

grievance is timely filed. The arbitrator has no authority to alter the terms of the contract and finding no basis for any waiver, the arbitrator is compelled to rule that the grievance is untimely filed. I am therefore taking no action on the merits of the dispute since the finding of untimely filing eliminates the right of the arbitrator to consider the merits of the case. An Award will issue accordingly.

A W A R D

The grievance in the instant case involving the termination of Carlos Cloud was untimely filed within the meaning of the labor agreement between the parties. It must therefore be considered as waived and the grievance is hereby dismissed.

Albert A. Epstein
ALBERT A. EPSTEIN
ARBITRATOR

CHICAGO, ILLINOIS
JUNE 10, 1982