

REGULAR ARBITRATION PANEL

In the Matter of Arbitration)	
)	Grievant: Jason Nardini
Between)	
)	Post Office: South Windsor, CT
United States Postal Service)	
)	Case No: B11N4BC1519039
and)	
)	Union No: 15-06074-042
National Association of)	<i>DRT # 14-343504</i>
Letter Carriers, AFL-CIO)	

Before: EILEEN A. CENCI

Appearances:

For United States Postal Service: Glenn Smith

For National Association of Letter Carriers: Thomas J. Cronin, II

Place of Hearing: Hartford, CT

Date of Hearing: November 17, 2015

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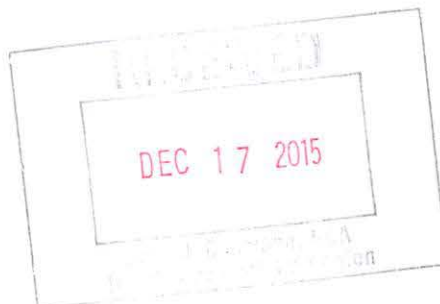
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VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS

AWARD: The evidence does not establish that management violated the National Agreement by failing to properly inform the Department of Labor OWCP of the accurate date(s) involving the grievant's compensation claim. The grievance is therefore denied.

Date of Award: December 14, 2015

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 November 17, 2015. The parties appeared and were given a full and fair opportunity to be heard. The parties did not call witnesses but introduced a joint case file. They also presented written submissions and made arguments in support of their respective positions. The record was closed on the day of hearing.

ISSUE:

The parties agreed to the following issue statement:

Did management violate Articles 5, 19 and 21 of the National Agreement when management failed to properly inform the Department of Labor OWCP of the accurate date(s) involving the grievant's compensation claim?

If so, what should the remedy be?

FACTS:

The grievant in this case claims that he injured his ankle while delivering mail on April 2, 2015. He did not report the injury immediately, however, and continued to work, including overtime hours, until April 11, 2015. On April 12, 2015 the grievant was seen at a hospital emergency room. On April 13, 2015 he notified management by telephone for the first time that he had been injured at work on April 2, 2015 and would be out of work.

The grievant went to the office on April 17, 2015 and received a Form CA-1. He completed the form incorrectly, listing his birth date as the injury date and did not provide medical documentation to the manager at that time. Management did not submit the incomplete Form CA-1 to OWCP but instead asked the grievant to complete the form correctly. On April 22, 2015 the completed a second CA-1 and it was submitted to OWCP.

The Postal Service notified the grievant on April 27, 2015 that it would challenge his claim on the grounds that the grievant had not notified anyone of his injury until April 22, 2015. OWCP then offered the grievant an opportunity on April 29, 2015 to submit additional medical documentation. OWCP issued a Notice of Decision denying the claim on June 4, 2015. The reason given for the denial was that the grievant had failed to provide consistent supporting evidence that the alleged work injury did in fact occur at the time and place and in the manner alleged. The OWCP decision is currently on appeal.

The Union filed this grievance alleging that management should have informed the grievant to come in on April 13, 2015, when he first reported the injury, to complete Form CA-1. It also argues that management incorrectly completed its portion of the Form CA-1 on April 17, 2015 and failed to submit the form completed on that date. Management did not answer "yes" or "no" to the question of whether the grievant was injured in the line of duty on April 17, 2015. Instead, management responded to that and other questions by saying that the date of injury was unknown since the grievant did not report the accident until April 17, 2015. The grievance also claimed that management failed to properly notify the grievant that it intended to controvert his claim.

The remedy sought by the Union in the grievance was that management cease and desist from future violations of a similar nature, that the grievant receive monetary compensation for any hardship resulting from the violation, and that management at the South Windsor Post Office be trained on proper OWCP procedures, and a copy of the training be provided to the Union.

Management responded to the grievance by stating that the grievant first reported the injury on April 17, 2015 rather than April 13, 2015, that he complete Form CA-1 incorrectly on that date and that management informed him that the CA-1 was incomplete and asked him to complete it correctly.

The grievance was denied at the lower levels of the grievance process and the B Team reached impasse. It was then appealed to arbitration by the Union.

Numerous other grievances related to this matter were filed by the Union. All but this and one other case were resolved by the B Team. Management was found to have violated the National Agreement by failing to provide the grievant with a First Fill Temporary Pharmacy Card on April 17 and 22, 2015. It was ordered to cease and desist and to seek guidance from the

Health and Resource Management (HRM) Department on the issuance of such cards (B Team Decision in Case #15194054). The B Team also resolved Case #15194057, which alleged that management failed to provide the grievant with a properly executed Form CA-17 for all doctor appointment dates, in the grievant's favor. Management was ordered to cease and desist and to seek the advice and counsel of HRM. OWCP training was recommended. In Case #C15194064 the Union alleged that management violated the National Agreement when a supervisor failed to complete the Supervisor section of the CA-17 on April 17, 2015 and instead submitted the CA-1 that was completed on April 22, 2015, which was also not properly completed. As a result, OWCP erroneously found that the grievant filed the CA-1 on April 22, 2015 rather than on April 17, 2015. The B Team resolved the matter by finding that management had violated the agreement. It again directed management to seek the advice and counsel of HRM, and recommended OWCP training. Another grievance was filed over management's failure to place the grievant on COP beginning April 17, 2015 (Case #C1506074037). The B Team resolved the grievance with a finding that management had violated the National Agreement. Since, however, the grievant's OWCP case had been denied and is being appealed, the B Team did not order payment of COP and instead recommended OWCP training for management, and ordered that it seek the advice and counsel of HRM when unsure how to proceed. Another violation was found in Case #C15194047, where the B Team concluded that management failed to inform the grievant of his OWCP Rights and Responsibilities on multiple occasions. A similar remedy, recommending training and consultation with HRM, was ordered.

In several of the related grievances, the B Team found that no violation had occurred. In Case #C15194060, the B Team found that management did not violate the National Agreement by failing to provide the grievant with a properly executed CA-16 on April 17, 2015. No violation was found in Case #15194059 in which the Union alleged that management had provided the grievant with an inaccurate OWCP form.

The B Team declared impasse in one other of the related grievances, Case #C15194043, in which the Union alleged that management failed to properly inform the grievant that his case was being controverted by explaining the basis for the controversy.

CONTRACT:

Article 19 Handbooks and Manuals

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable...

EMPLOYEE LABOR RELATIONS MANUAL (ELM)

FECA Claim Requirements

542.112 Time Limit

FECA requires that written notice of a traumatic injury be given by the employee, or person acting on behalf of the employee, within 3 years of the injury. However, failure to give notice on Form CA-1 within 30 calendar days from the date the injury occurred will result in a loss of entitlement to COP and may also result in a loss of compensation rights if the claim for compensation is not filed within 3 years. In order to protect their own interests and to ensure an uninterrupted income, employees should give notice or have someone give notice on their behalf, immediately after the traumatic injury occurs.

POSITIONS OF THE PARTIES:

NATIONAL ASSOCIATION OF LETTER CARRIERS (UNION)

The grievance is arbitrable. It does not seek to overturn the decision of OWCP and is not an effort to litigate issues that are properly before OWCP or have been decided by that agency. The grievance properly challenges the procedural errors made by Postal Service management in assisting the grievant with completing and filing his OWCP claim. The fact that the B Team resolved numerous other grievances raising similar issues about this claim is an indication that this and similar issues were properly raised through the grievance and arbitration process.

Management made numerous errors in assisting the grievant with the completion and filing of OWCP forms. The fact that the B Team resolved most of the grievances pertaining to this matter in the grievant's favor is evidence of the careless and unprofessional manner in which management worked with the grievant.

In this case management failed to submit the CA-1 the grievant completed on April 17,

2015 and instead submitted one dated April 22, 2015. As a result, OWCP erroneously concluded that the grievant had reported his injury on April 22, 2015. Management also failed to notify the grievant in a timely manner of the reasons it intended to controvert his claim.

The Union asks that the grievance be sustained and that management be ordered to cease such violations in the future. It further asks that all members of the South Windsor management team be retrained on OWCP procedures, with a copy of the training record completion being provided to the Union.

UNITED STATES POSTAL SERVICE (SERVICE)

The Service argues that the grievance is not arbitrable because OWCP has exclusive jurisdiction over matters pertaining to claims filed with that agency. The arbitrability issue can be properly raised for the first time at arbitration. The grievant claims that an improperly completed CA-1 form had an impact on the denial of his OWCP claim. However, he filed his claim within the required time limits. The grievant was also given the opportunity to provide additional information to OWCP, received its Notice of Decision, and had an opportunity to appeal that decision. His position was fully considered by the examiner. Any error by the Postal Service in reporting the proper dates is moot, since the grievant's claim was fully considered.

The grievance is without merit. Management did not violate the National Agreement by failing to properly complete the supervisor portion of the CA-1. The injury was not reported until April 17, 2015 although the grievant claims it occurred on April 2, 2015 and was reported on April 13, 2015. The grievant did not sign the CA-1 that he was given on April 17, 2015 and did not select COP vs. annual or sick leave. When he completed a second CA-1 on April 22, 2015, management completed its portion of the form and submitted it. The injury had not been officially reported until the CA-1 was properly completed and submitted on April 22, 2015. The grievant was properly notified of management's decision to controvert his claim.

There is no evidence that the OWCP Notice of Decision would have been different if the injury had been reported on April 13 or April 17, 2015. The denial of the claim is unrelated to the date it was filed. The claim was filed within the 30-day time limit set forth in ELM §542.112.

The Service asks that the grievance be denied.

DISCUSSION:

Both parties agree that the arbitrator has no jurisdiction over matters that are before OWCP. That agency has exclusive authority to rule on the issues pertaining to the grievant's claim for injury compensation. Limited issues pertaining to whether the Postal Service complied with the National Agreement and the Handbooks and Manuals incorporated into that agreement by the manner in which it processed the grievant's OWCP claim may be arbitrable, however.

The grievance before me, which alleges that management violated the National Agreement by not correctly completing its portion of the CA-1 on April 17, 2015 and filing the completed form on that date, falls within the narrow range of complaints that may be considered arbitrable.

The Union has not proved its case on the merits, however. The evidence shows that the grievant incorrectly completed the CA-1 on April 17, 2015 by giving his birth date as the date of injury. He also failed to submit necessary medical documentation on that date. Management could not and did not submit the incomplete and incorrect form, but instead asked the grievant to complete the form correctly. This was done and the form was submitted on April 22, 2015.

There is no evidence that the submission of Form CA-1 on April 22, 2015 rather than on April 17, 2015 had an impact on the OWCP decision. The grievant's claim was submitted in a timely manner under ELM §542.112. Management properly notified the grievant of its intent to controvert his claim by letter dated April 27, 2015. Once management controverted the claim, the grievant had an opportunity to submit a position statement and raise matters he believed OWCP should consider, including matters related to management's processing of his claim.

It is notable in this case that the numerous other grievances that have been filed and resolved by the B Team overlap in many respects the claims made in this case. For example, in Case #C15194064 the Union alleged that management violated the National Agreement when a supervisor failed to complete the Supervisor section of the CA-17 on April 17, 2015 and instead submitted the CA-1 that was completed on April 22, 2015, and also that the CA-1 submitted on that date was not properly completed. As a result, according to that grievance, OWCP erroneously found that the grievant filed the CA-1 on April 22, 2015 rather than on April 17, 2015. It is difficult to distinguish that case, which was resolved in the grievant's favor, from the current one claiming that management failed to properly inform OWCP of the accurate dates of

the grievant's claim. It is therefore uncertain that the grievance before the arbitrator raises any new issues that have not been previously resolved. Moreover, the remedy sought in the current case has been awarded by the B Team in no fewer than six other cases involving the grievant's injury claim. There is very little, if anything, new in this case in terms of either the claims raised or the remedy requested.

For the reasons set forth above, the grievance is denied.