

C#10974

REGULAR ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION . GRIEVANT: J. Gray
between . POST OFFICE: Lakeland, FL
UNITED STATES POSTAL SERVICE . CASE NO.: S7N-3W-D 33143
and . GTS NO. : 013657
NATIONAL ASSOCIATION OF LETTER .
CARRIERS .
.

BEFORE: Linda S. Byars, Arbitrator

APPEARANCES:

For the U. S. Postal Service: William Daigneault
Labor Relations Representative

For the Union: Chuck Windham
Regional Administrative Assistant

Place of Hearing: Lakeland, Florida

Date of Hearing: June 19, 1991

Matthew Rose, NALC
National Business Agent

REAPPOINTED
JUL 19 1991

Region 9

NALC
Br. Pres.
Cs. File
ADVOCATE

BACKGROUND

The dispute in this case arises out of the parties' use of the Union Management Pairs (UMP's) process to settle disputes involving discipline in the Tampa Division. The Guidelines for the UMP's process in cases of discipline provides as follows:

"Pre-disciplinary measures are required on all progressive disciplinary matters. Proposed disciplinary situations must be discussed between the union steward and the station/unit supervisor. If appropriate action is agreed to, that action will be taken. If appropriate action is not agreed to between the initial level supervisor and steward, management at the next level (i.e. Station Superintendent or Superintendent of Postal Operations) will meet with the steward to discuss appropriate action. If an agreement is still not reached, the steward will discuss the situation with the Union Branch President, who, if he so desires, will replace the steward at this level and meet with the Station Manager or Associate Office Postmaster to discuss appropriate action.

If appropriate action is not agreed to at the local level, the UMP Team will be summoned. The UMP Team will settle the difference of opinion. Any unresolved issue remaining will be reviewed by the Field Director, Human Resources, and the National Business Agent, NALC. Issues not agreed to at that level will be referred back to the station supervisor for implementation of disciplinary action. Contractual time limitations will then come into effect. (Up to this point of time, the time limitation set forth in Article 15 is waived.) [Management Exhibit #1, p. 2.]

On August 17, 1990 following the pre-disciplinary measures of the UMP's process, a settlement signed by Management Representative Gale D. Childs and Union Representative Thomas M. Alvis was issued regarding the proposed removal of James Gray, Jr., the Grievant. The Settlement states in part,

"As a final and complete settlement of the subject situation, the UMPS team agrees to the following:

* * *

In view of the past disciplinary record and the seriousness of the present charges, we mutually agree that the proposed removal is not arbitrary or unreasonable under the circumstances.

The UMPS team mutually agrees, based on the above to consider this case formally closed, effective with the signing of both parties to this agreement." [Joint Exhibit #2, p. 17-18.]

A Notice of Proposed Removal dated September 13, 1990 and signed by Superintendent, Station and Branch Operations J. E. Aust was issued charging Mr. Gray with "Insubordination, Failure to Follow Instructions - Conduct Unbecoming a Postal Employee - AWOL - Physical Attack on a Supervisor. [Joint Exhibit #2, p. 14.] The Notice of Proposed Removal states in part,

"You have the right to file a grievance under the Grievance/Arbitration procedure set forth in Article 15 of the National Agreement within 14 days of your receipt of this notice." [Joint Exhibit #2, p. 16.]

A Notice of Decision dated October 18, 1990 was issued by Postmaster Al Manganello affirming the removal of Mr. Gray and again advising as follows:

"You have the right to file an MSPB appeal and a grievance on the same matter. However, if the MSPB issues a decision on the merits of your appeal, if an MSPB hearing begins, if the MSPB closes the record after you request a decision without a hearing, or if you settle the MSPB appeal, you will be deemed to have waived access to arbitration. Further, if you have an MSPB appeal pending at the time the Union appeals your grievance to arbitration, you will be deemed to have waived access to arbitration."

A Grievance was filed contesting Mr. Gray's removal, and on October 4, 1990 Supervisor of Delivery and Collections Steve

Poland denied the Grievance. A Standard Grievance Form dated October 8, 1990 appealed the Grievance to Step 2, and a Step 2 decision dated October 19, 1990 and signed by Manager, Customer Service Paul McLendon denied the Grievance stating in part,

"You presented no new evidence or valid reasons why the UMPS decisions should or could be overturned.

After careful and detailed consideration to each charge, and review of all witness's statements I am convinced the UMPS decisions were correct and just."

The Union filed a Letter of Additions or Corrections dated November 24, 1990 and appealed the Grievance to Step 3. The Step 3 appeal was denied by Manager, Labor Relations Frank Dyer on February 25, 1991. Mr. Dyer's decision states in part,

"Since it is management's position that the resolution of this issue precludes any further discussion of the merits and considers the matter closed, this grievance is denied as procedurally defective and the merits will not be addressed."

On March 13, 1991 the Union requested arbitration of the Grievance, which was scheduled and heard before the undersigned on June 19, 1991. The parties presented evidence and argument regarding the procedural issue, and the hearing was closed for that purpose on June 19, 1991.

POSITIONS OF THE PARTIES

Postal Service's Position

The Postal Service contends that the Grievance is not arbitrable. The parties have agreed to replace Steps 1 through 3 with the UMP's process. A final and binding settlement was reached by the UMP's team on August 17, 1990 that the case was formally closed with their decision. The settlement of the UMP's team is not a suggestion but a final resolution of the

issue, and the Union is estopped by this settlement from filing any further appeal. The Union's attempt to pursue a grievance to arbitration following a settlement by the UMP's team is unprecedented in the Tampa Division. If the settlement is not upheld in this case, management will not be required to comply with settlements adverse to their positions. Therefore, the UMP's program cannot survive if the Union is allowed to arbitrate this case.

The UMP's process was designed to force the parties to abide by the contractual goal of the grievance procedure, ". . . (the) settlement or withdrawal of substantially all grievances . . . at the lowest possible step" [Joint Exhibit #1, Article 15, Section 3, A.] The Union has an obligation to represent the employees of the bargaining unit, but it is also obliged to abide by its agreements. The Grievant was represented by the Union, and a settlement was reached. The Grievant is asking for something which is inconsistent with the settlement, and therefore the Union is estopped from further pursuing the Grievance.

Union's Position

The Union contends that the Grievance is arbitrable on its merits. The UMP's settlement agreement does not constitute a waiver of the employee's right to file a grievance after the imposition of discipline. The controlling language is in the National Agreement, which grants the employee and the Union the right to the grievance/arbitration procedure when discipline has been imposed. The Notice of Proposed Removal reaffirms the

Grievant's right to file a grievance under the Grievance/Arbitration procedure, and the Notice of Decision states that the Grievant has the right to file both a grievance and an MSPB appeal. As further implication of the Union's right to pursue a grievance to arbitration, is the Notice of Decision's statement of circumstances under which an MSPB appeal would prevent the appeal of a grievance to arbitration.

The UMP's procedure has been very successful, and the appeal of one removal case to arbitration will not destroy the system. The Union must continue to be responsible to its membership by assuring that the principles of just cause apply. In support of its position on arbitrability, the Union cites the decision of Arbitrator John F. Caraway in Case No. S7N-3S-D 28673 and 28674 in which the grievance was found arbitrable despite the Postal Service's argument that a Last Chance Agreement precluded the hearing of the case on its merits.

OPINION

There is no dispute that the UMP's program has been a highly successful experience in dispute resolution and one which the parties wish to continue. The parties have stipulated that although there have been grievances filed subsequent to an UMP's settlement upholding discipline, the Grievance before the Arbitrator is the first pursued to arbitration. There is no dispute that once discipline has been imposed following an UMP's settlement the employee has a right to file a grievance. The dispute is whether or not the Union has the right to appeal that grievance to arbitration.

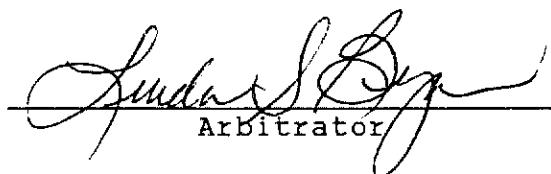
The employee's right to file a grievance derives from Article 16, Section 1 which states in part, "Any such discipline or discharge shall be subject to the grievance-arbitration procedure provided for in this Agreement, which could result in reinstatement and restitution, including back pay." [Joint Exhibit #1, Article 16, Section 1.] UMP's is a pre-disciplinary process, and the parties have interpreted Article 16, Section 1 to apply following the imposition of discipline. Contrary to the Postal Service's position, the language of the contract clearly gives a disciplined employee a right to the full grievance-arbitration procedure, and it is obvious that the right to file a grievance following an UMP's resolution would have no meaning or benefit if the appeal could not be made past the first step. It is clear therefore that the language representing the UMP's settlement as a "final and complete settlement" applies to the UMP's procedure, not the grievance/arbitration procedure. As the training statement indicates, the UMP's team meets, reviews the evidence and, ". . . determines what action should be taken, acting jointly to issue a decision much as an arbitrator would." (Management Exhibit #3, p. 3.) There is nothing in the training statement, the guidelines or the August 17, 1990 UMP's Settlement which would indicate that an UMP's settlement supplants the arbitration step of the grievance procedure. Moreover, the local parties are without authority to make an agreement inconsistent with or in conflict with the National Agreement.

As the Postal Service argues the UMP's discipline process

will no doubt be compromised to a great extent by the hearing of a case on its merits. It is, however, the Arbitrator's responsibility to uphold the language of the National Agreement. Therefore, until a modification of the grievance/arbitration procedure is agreed to at the national level to include an UMP's determination as a final and binding step prior to arbitration, the Arbitrator must uphold the procedure outlined in the National Agreement.

AWARD

The Grievance is arbitrable on its merits.



Linda S. Bynum
Arbitrator

July 16, 1991
Date