

## REGULAR ARBITRATION PANEL

In the Matter of Arbitration )  
 Between ) Grievant: Joseph Mahon  
 United States Postal Service ) Post Office: New Haven, CT  
 and ) Case No: B11N4BC14059400  
 National Association of ) Union No: 1900414ALL  
 Letter Carriers, AFL-CIO ) *DRT # 14-291268*

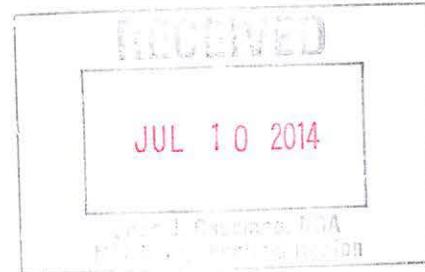
Before: EILEEN A. CENCI

## Appearances:

For United States Postal Service: Scott Duell  
 For National Association of Letter Carriers: Charles Carroll

Place of Hearing: New Haven, Connecticut

Date of Hearing: June 3, 2014



**AWARD:** Management violated the National Agreement, Article 17 when it failed to work cooperatively with the Union to discuss requested Union time and the reasons for its denial, inform the Union when the time could be scheduled or grant an extension so that grievances could be investigated and filed prior to the filing deadline. Management is ordered to abide by the provisions of Article 17 and prior Step B decisions by granting requests for union time as expeditiously as possible, discussing the reasons for any necessary denials with the Union and informing the Union when requested union time can be granted. Management is further ordered to pay the grievant at the overtime rate for 8 hours that he worked on grievances during his scheduled leave.

**RECEIVED**

Date of Award: July 2, 2014

AUG - 4 2014

Regular Regional Arbitration Panel

VICE PRESIDENT'S  
OFFICE  
NALC HEADQUARTERS

*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 June 3, 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.

### **ISSUE:**

The parties agreed to adopt the issue from the Step B decision:

Did management violate the National Agreement, Articles 5, 15 and 17 when it unreasonably denied Steward Mahon a time extension and/or requested Union time to investigate and process grievances on the clock?

If so, what is the appropriate remedy?

### **FACTS:**

This case concerns the denial of union time requested by Steward Joseph Mahon at the Allington Station to investigate and process grievances. Mr. Mahon was one of two union stewards at the Allington Station of the New Haven Post Office. The other was steward Jim McGee. Each steward followed his own cases from the investigation through the hearing stages.

Steward Mahon requested union time on each day he worked from December 16, 2013 to December 23, 2013. The requests were cumulative, and listed each matter he had to work on and the time requested for each. As he completed matters they were moved from the list and new ones were added as they arose. Steward Mahon worked from the oldest matter to the most recent.

Steward Mahon requested and was granted the following time between December 16 and December 23, 2013:

<u>Date</u>	<u>Requested</u>	<u>Granted</u>
December 16, 2013	29 hours	6.47 hours
December 17, 2013	28 hours	3.07 hours
December 18, 2013	25 hours	4.39 hours
December 19, 2013	34 hours	10.51 hours
December 20, 2013	31 hours	3.85 hours
December 21, 2013	28 hours	6.08 hours
December 23, 2013	28 hours	6.49 hours

Steward McGee had been on scheduled leave during the week leading up to December 23, 2013 while Steward Mahon had scheduled annual leave from December 24, 2013 to December 30, 2013. Steward McGee returned to work on December 23, 2013. The two stewards saw each other for approximately five minutes in the morning but did not discuss union business at that time.

On his last day of work before his scheduled leave, December 23, 2013, Steward Mahon was unable to complete work on two grievances with filing deadlines during his planned leave. These were requests for 6 hours to work on a grievance alleging that no clerk had been available to clear carriers on a particular Saturday and 6 hours to investigate and grieve that management unreasonably delayed interviews. The requests for 6 hours to work on each of the grievances had been listed on the requests he had filed for the previous week.

On the afternoon of December 23, 2013 Steward Mahon realized he could not complete the grievances with deadlines and requested extensions until January 14, 2014. The grievant's supervisor denied the request. Steward Mahon later spoke to manager Jim Rooney, who told him he could not grant an extension. The grievant attempted to contact a manager in the District office to prevent a problem but did not hear back from her before the end of the day. When the grievant was leaving the building he saw Manager Rooney, who wished him a Merry Christmas. The grievant replied that he was going to have to work during his Christmas leave.

Steward Mahon did not ask Steward McGee to handle the grievance appeals with

deadlines during his leave. At the time he saw Steward McGee on the morning of December 23, 2013 he had not yet requested and been denied an extension. Steward Mahon worked during his leave to complete the investigations of the two grievances with deadlines the following week. He researched and cited other grievances from the station in preparing the appeals.

After returning to work following his scheduled leave Steward Mahon filed a grievance over having been forced to work off the clock to complete the grievance appeals. The grievance claimed that Steward Mahon had worked for 16 hours on December 27 and 28, 2013. It asked that he be paid 16 hours at the penalty rate and be reimbursed for 16 hours of annual leave that he used on December 27 and 28, 2013.

Steward Mahon met at the Informal A level where the grievance was denied on the grounds that there had been another steward in the building who could have completed the work prior to the deadline. At the Formal A level Steward Mahon met with Manager Rooney. The grievance was again denied on the grounds that management did not have to grant leave requests where there was another steward in the building. Steward Mahon said he had not been told that was the reason for the denial on December 23, 2013 when he made the extension request. The matter was appealed to arbitration after the B team was unable to resolve it.

The Postal Service policy, as set forth in the JCAM and based on Step 4 decisions from 1975 and 1978, is that requests for union time are not to be unreasonably denied. Moreover, if management must delay a steward from investigating a grievance it should inform the steward of the reason for the delay and should also inform him of when time will be available. In a settlement agreement approved by the Regional director of the NLRB in 2009 management had agreed not to unreasonably deny the local steward time to investigate and adjust grievances.

Several Step B decisions involving the denial of union time to Steward Mahon were included in the grievance file. The DRT resolved a matter on February 29, 2012 by ordering management to pay Steward Mahon at the overtime rate for 2.5 hours he worked off the clock to process a grievance. The DRT further instructed the parties to discuss the union's requests for time and schedule to ensure that grievances could be processed within time limits. In a decision on March 20, 2012 the DRT resolved another matter with an order that the parties meet each day that the union submitted a request for time and discuss the schedule as to when the time would be provided. Requested time was to be provided in as expeditious a manner as possible based upon

business conditions and the union's availability. In a decision on September 4, 2013 the DRT found that management had violated the National Agreement by failing to grant Steward Mahon sufficient union time to process a grievance while in a pay status, resulting in his working on the grievance at home. Steward Mahon was paid for three hours at the double time rate due to the repetitive nature of the violation. Management had argued in that case that the grievant could have requested a time extension rather than working on union business at home.

A number of Formal A and Informal A grievance resolutions were also included in the case file. Several of these grievances were resolved with agreements to cease and desist from denying union time and to pay the union steward for time spent working at home on union grievances.

## **CONTRACT:**

### **JOINT CONTRACT ADMINISTRATION MANUAL (JCAM)**

#### **Article 15.2**

The time limits for filing a grievance at Informal A or appealing to Formal Step A may be extended by mutual agreement.

#### **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.

...

##### **Section 4. Payment of Stewards**

The Employer will authorize payment only under the following conditions:

Grievances—Informal and Formal Step A: The aggrieved and one Union steward (only as permitted under the formula in Section 2.A) for time actually spent in grievance handling, including investigation and meetings with the Employer. The Employer will also compensate a steward for the time reasonably necessary to write a grievance. In addition, the Employer will compensate any witnesses for the time required to attend a Formal Step A meeting.

...

**POSITIONS OF THE PARTIES:**

**NATIONAL ASSOCIATION OF LETTER CARRIERS (UNION)**

A large number of grievances were being investigated and filed at the Allington station during the time period at issue here, resulting in the need for an unusual amount of union time. The union steward properly submitted requests for the time and information needed to prepare grievances during the week before his scheduled leave. He was granted less than the amount of union time he requested and the time allowed was insufficient to complete the necessary work and meet all deadlines. In addition, the steward's request for an extension was denied by management. This left the steward with no option but to work on the grievances during his vacation and submit a request for payment.

Management's argument that the grievant could have transferred the investigations to another steward when he went on leave so that the deadlines could be met is flawed. Stewards at the Allington station have a practice of keeping the grievances they begin to investigate. The grievances with deadlines during Steward Mahon's leave were investigations he had worked on from the outset. Steward McGee was unfamiliar with these matters since he had been on leave himself prior to the grievant's planned leave. Steward McGee returned to work on December 23, 2013, the grievant's last day, and the two saw each other only briefly. Steward Mahon's request for an extension had not yet been denied at that time and he had no reason to transfer the matters to Steward McGee.

While the decision to grant extensions is discretionary under the contract, the parties have a history of extending the courtesy of extensions. The withdrawal of that courtesy at Christmas, when the union steward had planned annual leave, set in motion a chain of events that forced the steward to work on union business during his leave and file this grievance. Management never discussed the reason for the extension request with Steward Mahon and never gave him a reason for denying the request.

The Union asks that the grievance be sustained and that management be ordered to cease and desist from unreasonably denying requests for union time. It further asks that the grievant be paid for the 16 hours he worked while on leave at the penalty rate and that he be granted 16 hours of administrative leave.

UNITED STATES POSTAL SERVICE (SERVICE)

The amount of union time granted to the steward in the days leading up to this grievance was fair and reasonable. For the seven consecutive business days from December 16 to December 23, 2013 the steward was provided 40.86 hours of union time and was conducting union business during 75% of his work hours. Management does not control which grievances the steward works on during the allotted union time and the Union failed to complete work on grievances with pending deadlines despite the large amount of union time granted.

Neither party is obligated to grant grievance extensions. The grievant's last day of work prior to his leave was December 23, 2013 and that was also the day Steward McGee returned from leave. The grievant should have made arrangements with Steward McGee to handle the grievances in his absence rather than relying upon an extension that management was not obligated to grant.

The Service asks that the grievance be denied in its entirety. If, however, a remedy is granted, the request for 64 paid hours is excessive and far beyond what is reasonably necessary to make the grievant whole.

DISCUSSION:

There is no question but that the grievant was given a significant amount of union time in the days prior to the beginning of his scheduled leave on December 24, 2013. He received union time every day he worked between December 16 and December 23, 2013. Although he did not receive the full amount of time each day that he requested, the aggregate amount of union time granted over that seven day period was substantial. The majority of the grievant's working hours were spent on union business. Particularly given the fact that this time period was during the busy Christmas mailing season, there is no reason to conclude that the 40.86 hours of union time the grievant received during the week prior to his annual leave was unreasonable on its face. The sheer number of hours granted is not the only measure of whether a violation occurred, however.

It is apparent from the case file that the issue of granting sufficient union time had been a long-standing one at the Allington station. Numerous settled grievances and Step B decisions

attest to the ongoing nature of the problem. While grievance settlements should not be considered precedent, Step B decisions from the same facility involving the same parties and the same issue as the one being arbitrated do have significance. The Step B decisions in the grievance file were resolved with cease and desist orders, payment to the steward for time worked off the clock and admonishments that management must communicate better with the Union about the reasons union time had to be denied. In addition, when requests for union time could not be granted, management was advised to provide the Union with information about when it would receive the needed time. The B team clearly discerned a pattern whereby management at the Allington station denied necessary union time and failed to communicate effectively with the union about the reasons for denials or provide a reasonable schedule as to when the time could be granted. In a decision rendered only months before this case arose, the B team found that management had committed a violation when it denied union time and ordered that the steward be paid at the double time rate due to the repetitive nature of the violation. In that case management had defended, unsuccessfully, on the grounds that the steward could have avoided working off the clock by requesting an extension.

Despite this history of being ordered to work more cooperatively with the union to provide requested union time, management failed to communicate effectively with the union in the days prior to December 23, 2013. Significant union time was granted but some requested time had to be denied. Despite being repeatedly found in violation of the same contract provision by the B Team in recent years, management in this case made little apparent effort to work with the union when the requested hours of union time exceeded the amount that could reasonably be provided. This was true despite the fact that some grievances had deadlines and the union steward had scheduled leave. There was no effort to discuss the problem and work through the limitations caused by the holiday and the steward's scheduled leave.

When the union sought an extension as a means of coping with the problem management denied that request, even though an extension had been the means suggested by management to alleviate a similar problem a few months earlier when a similar problem arose. Management had no obligation to agree to the requested extension, but the poor communication and planning in advance of December 23, combined with the denial of an extension request on the day before the steward's scheduled leave left him with few options other than working off the clock to meet a

filing deadline.

The option of having Steward McGee work on the time-sensitive grievances was not realistic under the circumstances. Steward McGee had not been in the workplace during the week prior to December 23, 2013 and was unfamiliar with the grievances that had pending deadlines. He and steward Mahon had little opportunity to interact on December 23 and during the brief time they saw each other Steward Mahon had not yet requested and been denied an extension. Steward Mahon had no reason to anticipate in advance that his extension request would be denied since the parties had a long history of granting each other the courtesy of extensions during periods of scheduled leave.

Although I find that steward Mahon had little choice but to work on two grievances during his annual leave, I find no support for his claim that sixteen hours of work were required. Moreover, I find that the Union contributed to some extent to the problem that arose with the two grievances. As of the morning of December 23, 2013 Steward Mahon was requesting a total of 28 hours of Union time. Twelve of those hours were to work on grievances with deadlines during his annual leave. Certainly, he knew that he could not be given even twelve hours of Union time on his last day of work and therefore could not meet the deadlines. The record is unclear as to whether the other matters he had worked on in the previous week had similar deadlines and whether he could have alleviated the situation by working on the two grievances with deadlines out of order. Even if such rearranging was not possible, Steward Mahon could have anticipated the problem and informed management earlier that he would not be able to meet the grievance deadlines without an extension, additional union time or time to meet with Steward McGee and transfer the matters to him.

In summary, I find the poor communication between the parties to be the root cause of the problem that occurred here. Both parties contributed to the breakdown but management has a history of Article 17 violations, as documented by recent Step B decisions, and must bear a large part of the responsibility. By not following the directive of previous Step B decisions and discussing requests for union time, the reasons for denials and a schedule when the time could be granted, management violated Article 17. This lack of communication, combined with the denial of a last-minute extension request that could have alleviated the problem, left the steward with little alternative but to work on the time sensitive grievances off the clock.