

NORTHEAST AREA REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS



Before:

Jonathan I. Klein,
Arbitrator

Appearances:

For the Postal Service:

Scott Duell
Labor Relations Specialist

For the Union:

Vincent Mase
NALC Advocate

Place of Hearing:

New Haven, Connecticut

Date of Hearing:

March 26, 2014

Date of Award

May 10, 2014

Relevant Contract Provisions:

Articles 15, 17 and 19

Contract Year:

2011 - 2016

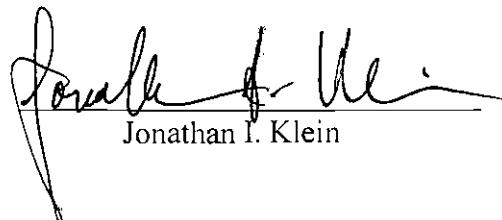
Type of Grievance:

Contract



AWARD SUMMARY

The evidence of record establishes that the instant grievance is not procedurally defective as claimed by the Postal Service. Further, the Union satisfied its burden of proof that the Postal Service violated the National Agreement as a result of local management instructing letter carriers to deliver address cards without the detached mailing. Therefore, the grievance is arbitrable and sustained, in part, as set forth in the Award.



Jonathan I. Klein

STATEMENT OF FACTS

On September 9, 2013, letter carriers at the Whitneyville Station in New Haven, Connecticut were instructed by local management to deliver Direct Advantage Magazine cards without the detached flat portion of the mailing. On September 26, 2013, the Union filed a class action grievance to protest the alleged contractual violation by management. (Joint Ex. 2, at 11-12). The Union requested the following remedy: "... all employee's [sic] in the 06517, including CCA holding down CR 1739, receive \$50 for the loss of overtime/penalty time they would have received to work the detached mailing." (Joint Ex. 2, at 14).

A Formal Step A meeting was held on October 2, 2013, and the grievance was progressed to Step B on October 11, 2013. The Step B Dispute Resolution Team subsequently declared an impasse on October 18, 2013. (Joint Ex. 2, at 1-10). The parties proceeded to arbitration and a hearing was conducted on March 26, 2014, at which time the parties were afforded full opportunity to present documentary evidence, direct and cross-examine witnesses, offer rebuttal

testimony and present argument. Each party presented an oral closing statement in support of their respective positions.

STATEMENT OF ISSUE

The stipulated issue in this case is set forth by the Step B Dispute Resolution Team:

Did management violate the National Agreement, Articles 15 and 19, and Postal Regulations when MSC Operations Mike Parent instructed carriers to deliver the addressed label in DPS without the detached mailing and if so, what is the proper remedy?

(Joint Ex. 3, at 1).

RELEVANT CONTRACT PROVISIONS

Article 15 of the National Agreement provides, in pertinent part, as follows:

* * *

15.2 Formal Step A

(c) The installation head or designee will meet with the steward or a Union representative as expeditiously as possible, but no later than seven (7) days following receipt of the Joint Step A Grievance Form unless the parties agree upon a later date. In all grievances at Formal Step A, the grievant shall be represented for all purposes by a steward or a Union representative who shall have the authority to resolve the grievance as a result of discussions or compromise in this Step. The installation head or designee also shall have authority to resolve the grievance in whole or in part.

(d) At the meeting the Union representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from witnesses or other individuals. The Employer

representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Articles 17 and 31. The parties' representatives may mutually agree to jointly interview witnesses where desirable to assure full development of all facts and contentions. In addition, in cases involving discharge either party shall have the right to present no more than two witnesses. Such right shall not preclude the parties from jointly agreeing to interview additional witnesses as provided above.

- (e) Any resolution of a grievance in Formal Step A shall be in writing or shall be noted on the Joint Step A Grievance Form, but shall not be a precedent for any purpose, unless the parties specifically so agree or develop an agreement to dispose of future similar or related problems. If the grievance is resolved, a copy of the resolution will be sent to the steward and supervisor who initially were unable to resolve the grievance.

* * *

The JCAM at page 15-5 states, in part:

* * *

The Formal Step A meeting must be held between the installation head or designee and the branch president or designee as soon as possible but no later than seven calendar days after the installation head receives the Joint Step A Grievance Form (unless the parties agree to an extension). (Italics and bold added).

Article 17 of the National Agreement entitled "Representation," provides, in part, as follows:

Section 1. Stewards

Stewards may be designated for the purpose of investigating, presenting and adjusting grievances.

Section 2. Appointment of Stewards

A. The Union will certify to the Employer in writing a steward or stewards and alternates in accordance with the following general guidelines. Where more than one steward is appointed, one shall be designated chief steward. The selection and appointment of stewards or chief stewards is the sole and exclusive function of the Union. Stewards will be certified to represent employees in specific work location(s) on their tour; provided no more than one steward may be certified to represent employees in a particular work location(s). The number of stewards certified shall not exceed, but may be less than, the number provided by the formula hereinafter set forth.

* * *

B. At an installation, the Union may designate in writing to the Employer one Union officer actively employed at that installation to act as steward to investigate, present and adjust a specific grievance or to investigate a specific problem to determine whether to file a grievance. The activities of such Union officer shall be in lieu of a steward designated under the formula in Section 2.A and shall be in accordance with Section 3. Payment, when applicable, shall be in accordance with Section 4.

C. To provide steward service to installations with twenty or less craft employees where the Union has not certified a steward, a Union representative certified to the Employer in writing and compensated by the Union may perform the duties of a steward.

D. At the option of the Union, representatives not on the Employer's payroll shall be entitled to perform the functions of a steward or chief steward, provided such representatives are certified in writing to the Employer at the area level and providing such representatives act in lieu of stewards designated under the provisions of 2.A or 2.B above. (Italics added).

* * *

Article 19 of the National Agreement entitled “Handbooks and Manuals” provides, in part, as follows:

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. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper’s Instructions.

* * *

CONTENTIONS OF THE PARTIES

Union's Contentions

The Union asserts that there is a distinction between stewards and Formal A representatives under the applicable provisions contained in the contract. Specifically, Article 15 does not indicate that a Union representative must be certified, and “nowhere in Article 17 are representatives required to be certified.” It maintains that Formal A representatives are not necessarily stewards, and in fact, “they have Formal A representatives who are not stewards.” Although the contract requires stewards to be certified, there is no such requirement for Union representatives or Formal A representatives. In the instant grievance, Vincent Mase was not acting as a Union steward. The evidence establishes that he “did not investigate, put together the grievance package, or determine whether to file the grievance.” Moreover, the Postal Service

“never said that Mase investigated the grievance.” The Union points out that it has active employees appointed to act as stewards. There is no evidence that Mase was acting in lieu of the steward in this grievance.

The evidence reveals that local management was notified that Mase would be acting as the Formal A representative for the grievant, however “he was not acting as the steward and there was no obligation to be certified.” The Union notes that Mase is the branch president and he “designated himself to be the Formal A representative.” It reiterates that there is no contractual requirement to certify Union representatives at the area level. According to the Union, the Step B Team previously ruled in its favor on this very issue when it determined that “certification is not necessary for the advocate.” It points out that Step B decisions are precedent setting in this installation. Additionally, the Step B decision supports the Union’s position that management’s argument is without merit on the basis of “collateral estoppel, res judicata and issue preclusion.” Furthermore, it is apparent that Mase has been singled out by management as there have been no challenges to other Formal A representatives.

The Union asserts that the contract language in question is clear and unambiguous, and “management is trying to manipulate the language to suit its needs.” In the instant case, Mase did not investigate the grievance and he did not act as the steward. It points out that the steward made the decision to file the instant grievance, and “management is trying to block him from being the Formal A representative.”

As it concerns the merits of the grievance, the Union maintains that the Postal Service “has no case.” It notes that management presented no defense at Step B. The evidence establishes that the flyers, which should have been delivered with the cards, were shrink-wrapped and located on the workroom floor at the time the letter carriers reported to work on the morning in question. The Union asserts that the Postal Service was required to “deliver the flyers and cards that day.” According to the Union, “letter carriers are entitled to work their assigned routes and deliver all mail obligated to go out that day.” As a result of management’s actions, the letter carriers “lost out on overtime.” Additionally, the Union claims that the Postal Service’s vendors and patrons were treated unfairly and suffered harm.

The Union contends that cease and desist orders “do not mean anything” in New Haven because management “does not listen to those orders.” It points out that over 200 cease and desist orders regarding one issue were violated by local management last year. Contrary to management’s position, a \$50.00 monetary remedy per letter carrier is not a penalty. The Union is seeking to “put the letter carriers in the position that they would have been in without the violation.” It notes that two Union stewards attempted to address the situation with management, however, they were turned away. Clearly, management’s actions were both unreasonable and a willful and malicious violation of the contract. In determining the appropriate remedy in this case, the arbitrator must look at the totality of the circumstances and not simply whether this was a first time occurrence of such a violation. For each of the aforementioned reasons, the Union

requests that the grievance be sustained in its entirety to “send a message to management and a financial incentive to not do it again.”

Management’s Contentions

The Postal Service contends that the grievance is procedurally defective for the reason that local Union president Vincent Mase designated himself as the Formal A representative despite the fact that he is not certified. According to the Postal Service, “[m]anagement had no viable alternative other than to meet with President Mase for the Formal A meeting on October 2, 2013.” (Postal Service Opening Statement, 1). The Union would have simply appealed the grievance to the Step B Team without the benefit of management’s contentions if supervisor Parent refused to meet with Mase at the Formal A meeting.

The Postal Service asserts that the Union failed to comply with the certification requirements set forth in Article 17 of the National Agreement, and therefore, the “. . . grievance must be found as inoperative.” (Postal Service Opening Statement, 1). It points out that local Union president Mase is a former employee who is no longer on the Postal Service’s payroll, and it is his decision whether or not he will perform the functions of a steward or chief steward. However, he must be certified at the Northeast Area office prior to performing those functions. The evidence established that “. . . Mase never certified to the Employer in writing at the Northeast Area office.” (Postal Service Opening Statement, 2). The Postal Service asserts that a Formal A representative who is representing the Union in a dispute or disagreement pertaining to

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wages, hours, and/or conditions of employment must be certified to the employer in writing.

Additionally, the Postal Service maintains that Articles 15 and 17 must be read in concert by the arbitrator. It specifically points out that Article 17(2)(D) provides that a Union representative not on the employer's payroll must be certified to the area office. The Union presented no evidence that local Union president Mase was certified at the area level in accordance with Article 17(2)(D) of the National Agreement.

The Postal Service acknowledges that on September 10, 2013, management curtailed mail which was part of a detached mailing and instructed letter carriers to deliver the address cards without the accompanying flats. However, this action by management "... begs the question, who was harmed?" (Postal Service Closing Statement, 1). The Postal Service does not challenge the Union's reference to the bulletin which states that "[u]nder no circumstances should a detached address label be delivered without the associated sample or mail piece." However, the Postal Service disputes the Union's unwillingness to accept anything other than a punitive monetary remedy. It maintains that a monetary remedy is not in order simply because management violated the contract. According to the Postal Service, "[a] 'cease and desist' order is also a remedy which is appropriate when there is no proof that an employee has suffered any harm, nor any evidence that the violation was willful or malicious on the part of management." (Postal Service Closing Statement, 2). The Union presented no evidence in support of its claim that the letter carriers were harmed as a result of the contract violation. Additionally, the Postal Service points out that this was the first occurrence of a contractual violation of this nature.

The Postal Service questions “. . . how could the letter carriers . . . lose overtime ‘in delivering and handling the extra mail’ which they never handled or delivered that day . . .” (Postal Service Closing Statement, 3). It notes that the flyers in question were delivered by the letter carriers on the following day. The Postal Service argues that the letter carriers would not have been required to recase the detached labels, and “[i]f the detached labels had not been delivered, they would have been manually pulled out and returned to mail processing operations for DPS.” (Postal Service Closing Statement, 3). Moreover, there is no guaranteed right to overtime work. Based upon the facts and circumstances presented in this case, the Postal Service asserts that a cease and desist order is the appropriate remedy for management’s contractual violation.

OPINION AND ANALYSIS

There is no dispute that letter carriers at the Whitneyville delivery unit were instructed to deliver address cards without the accompanying detached mail. The Step B Decision sets forth the following undisputed facts:

1. M-01026 12/31/87 is undisputed when it states: ‘under no circumstances should a detached address label be delivered without the associated sample or mailpiece.’
2. MSCO Mile [sic] Parent read the B-Team decision case #08-06076-01 today 10/2/13 from Branch 86.

The case file establishes that on 9/0/13, the letter carriers in the Whitneyville Station of the New Haven Installation received their DPS mail with Direct Advantage Magazine cards. These cards are part of a detached mailing along with a detached flat. The flat portion of the mailing had not been distributed to the carriers and

was on a pallet. The carriers were instructed to deliver the cards without the flat portion of the mailing.

(Joint Ex. 2, at 2).

During the hearing, the Postal Service acknowledged that “they should have delivered the cards and marriage mail at the same time,” and the parties stipulated that local management violated Postal Bulletin 21652. Based upon the evidence of record presented in this case, the arbitrator finds that management violated M-01026 which contains the following provision of Postal Bulletin 21652, dated December 31, 1987: “Under no circumstances should a detached address label be delivered without the associated sample or mailpiece.” (Joint Ex. 2, at 25).

Although management failed to comply with the aforementioned Postal Bulletin, the Postal Service asserts that the grievance should nonetheless be denied because it is procedurally defective. Specifically, the Postal Service maintains that local Union president Mase was not certified to the area office as required by Article 17(2)(D) of the National Agreement. Therefore, he could not be the Formal A representative in the instant grievance. The Postal Service’s Formal A contentions provide, in part, as follows:

As written in the national agreement Article 17.2.D: the union may certify a representative not on the employer’s payroll to perform the functions of a steward or chief steward. Such representatives must be certified in writing to the appropriate Area office and will act in lieu of stewards designated under the provisions of Article 17.2.A or 17.2.B. Vincent Mase was notified via Express Mail (dated, August 5, 2013) to provide certification. The president responded with letter dated August 8, 2013. To this day he still has not provided any certification allowing him to step in and represent the specific employees he chooses to represent. (Joint Ex. 2, at 41).

Page 17-1 of the Joint Contract Administration Manual (JCAM) provides that stewards are contractually authorized to represent carriers in the investigation, presenting and adjustment of grievances. The record reveals that local president Mase is a part-time Union official who is not on the Postal Service's payroll. The JCAM sets forth four, alternative methods by which individuals may be certified as stewards. Article 17(2)(D) specifically provides: "At the option of the Union, representatives not on the Employer's payroll shall be entitled to perform the functions of a steward or chief steward, provided such representatives are certified in writing to the Employer at the area level *and providing such representatives act in lieu of stewards designated under the provisions of 2.A or 2.B above.* (emphasis supplied). Therefore, local Union president Mase is clearly authorized to perform the functions of a steward or chief steward provided that he is first certified to do so at the area level.

However, the Union argues in the instant case that local president Mase was neither performing the duties of a steward nor acting in lieu of a steward. The evidence of record establishes that letter carrier John Misthal was the steward who filed the class action grievance and investigated the matter on behalf of the Union. (Joint Ex. 2, at 11). This contention was not disputed by the Postal Service. The Union maintains that local president Mase was the Formal A representative, and therefore, he was not required to be certified under Article 17 of the National Agreement. For the following reasons, the arbitrator agrees with the Union's position under the facts and circumstances presented here.

Article 15.2(c) provides, in part, that “[i]n all grievances at Formal Step A, the grievant shall be represented for all purposes by a steward or a Union representative who shall have authority to resolve the grievance as a result of discussions or compromise in this Step.” There is no specific language contained in Article 15 of the National Agreement which indicates that a Union representative must be certified as a steward in accordance with the provisions contained in Article 17 in order to be a Formal A representative. According to the Postal Service, Articles 15 and 17 of the National Agreement must be read “in concert” with each other.

The proposition of the Postal Service that Articles 15 and 17 must be construed together to resolve any differences in meaning is a sound proposition to insure consistency of the parties’ intended meaning throughout the collective bargaining language. Here, however, the parties have included a specific, rather than a generalized reference to the “branch president” in Article 15 that appears nowhere in Article 17, and virtually no place else within the JCAM. The parties themselves have specifically agreed that “[t]he Formal A meeting must be held between the installation head or designee and the branch president or designee . . .” There is no express requirement that *a branch president* must be certified as a steward in order to meet with management at Formal Step A of the grievance procedure. The clear and unambiguous language agreed to by the parties indicates that a branch president is acting in his or her capacity as a Union official at the Formal Step A meeting, and not as a steward or in lieu of a steward. There is no evidence that Mase was acting as a steward, or in any capacity other than a branch president at Formal A of the grievance procedure. As such, there is no contractual requirement that local

president Mase be certified to the area level under the provisions of Article 17(2)(d) of the contract to be the Union's Formal A representative for this grievance.

The arbitrator's determination that local president Mase need not be certified in accordance with Article 17(2)(d) of the National Agreement to be the Union's Formal A representative is further supported by the argument and documentary evidence presented at hearing. The Union maintains that local president Mase has served as the Union's Formal A representative in various matters over the past several years. The Postal Service does not dispute this fact. Additionally, the documentary evidence establishes that local president Mase has also appointed several individuals who were either not stewards or not on the employer's payroll to serve as Formal A representatives. There is no evidence that the Postal Service challenged the appointment of any of these individuals as Formal A representatives because they were not certified under the applicable provisions of Article 17 of the National Agreement. Clearly, the parties have previously recognized the distinction between Formal A representatives and those individuals who must be certified as stewards under Article 17 of the National Agreement.

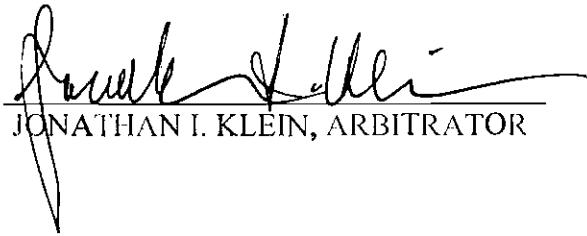
With respect to the remedy for management's contractual violation in this case, the arbitrator determines that a monetary award is neither appropriate nor warranted under these particular facts and circumstances. Although the Union points out that management has previously refused to comply with numerous cease and desist orders, the record establishes that this is the first occurrence of a violation of this nature at the New Haven installation. Furthermore, the arbitrator finds the evidence concerning the possibility of lost overtime work to

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be speculative at best. Accordingly, the arbitrator finds that a cease and desist order is the appropriate remedy in this case.

AWARD

The grievance is sustained, in part, as follows. The grievance is arbitrable, and the Union's local president properly served as the Union's Formal A representative without certification to the area level. The Postal Service violated the National Agreement as a result of local management instructing letter carriers to deliver address cards without the detached mailings. Management at the New Haven installation is directed to cease and desist from engaging in future violations of this nature.



JONATHAN I. KLEIN, ARBITRATOR

Date of Issuance: May 10, 2014.