

C#544

IN THE MATTER OF THE ARBITRATION)
)
 between)
) CLT-4C-C 31542
THE UNITED STATES POSTAL SERVICE) GORDON SEEMAN
) and)
) MINNEAPOLIS, MN. MPO
AMERICAN POSTAL WORKERS UNION) FEBRUARY 8, 1985

APPEARANCES

POSTAL SERVICE

Paul J. Sniadecki, Advocate

UNION

Matthew L. Davis, Sr., Advocate

ARBITRATOR

James P. Martin

ISSUE

- 1) Is the grievance procedurally arbitrable?
- 2) Is the grievance substantively arbitrable?

NATURE OF CASE

The grievant is employed as a General Mechanic, Letter Box Shop. In his duties, he is obligated to drive Postal Service vehicles. As a result of an incident which occurred on April 16, 1984, the grievant was denied his Safe Driving Award for 1984. The grievant was notified on April 23rd that he would not receive the Safe Driving Award and May 30th, a grievance was filed. The Postal Service challenged the timeliness of the filing of the grievance, because it exceeded 14 days after the incident concerning the grievance was known to the grievant.

Additionally, the Postal Service challenged the arbitrability of the grievance because it was substantively excluded from the definition of a grievance, and therefore was not arbitrable. The Safe Driver Award, according to the Postal Service, was beyond the scope of the Contract, and no Arbitrator had authority to review the decision of the National Safety Council, the final determinant of the propriety of the Safe Driver Award.

For its part, the Union alleged that the grievant had consistently attempted to follow the instructions of a superior in the manner of appealing the denial of the Safe Driving Award. Chronologically, the grievant had an accident

on April 6, 1984. About April 23rd, he received a copy of the PS Form 1768, which stated he was no longer qualified for a Safe Driver Award. He immediately went to his superior and attempted to file a grievance. He was told that there was an appeal procedure outside of the Contract, and the grievant promptly filed such an appeal. On or about May 4th, he received a Decision from the Area Safety Manager affirming his non-qualification for a Safe Driver Award. The grievant filed an appeal from that Decision, as he was told was the proper procedure, and had not received an answer by May 16th. In order to avoid any problem with the 14 day time limit, the grievant filed the grievance on May 30th. The Union's position was that the grievance was timely filed, because it was within 14 days of the latest action, which was the second appeal within the National Safety Council System, filed at the direction of his superiors. As to the substantive arbitrability of the matter, the Union position was that a grievance can be filed on anything affecting wages, hours or working conditions, and the committee structure rendering the decisions denying the grievant his Safe Driver Award was made up wholly of Postal Service employees and Management. The matter is therefore substantively arbitrable.

Both parties agreed that a hearing on the merits, if the matter were found to be arbitrable, would be scheduled at a later time.

APPLICABLE CONTRACT PROVISIONS

NATIONAL SAFETY COUNCIL SAFE DRIVER AWARD RULES

1. AWARD PLAN

1.1 RECOGNITION

The National Safety Council Safe Driver Award is the recognized trademark of professional drivers who have proven their skill in avoiding traffic accidents. It is the *highest award for professional safe driving performance*. More than eight million drivers have earned the award since 1930.

1.2 PERFORMANCE

The award program is more than a way to reward drivers with good safety records. The rules spell out the safety performance expected of professional drivers: the ability to operate a motor vehicle without having a preventable accident. The award rules are a yardstick by which drivers can measure their performance and by which supervisors can measure the performance of individual drivers. When this performance standard is understood by both drivers and supervisors, it becomes a logical, fair, and workable basis for effective safety supervision. These rules are for Safe Driver Award administration only. They are not to be used for disciplinary purposes. Discipline should be a separate consideration and disciplinary action is covered by specific postal regulations.

4.5 ACCIDENT REVIEW

DUTIES OF SAFE DRIVER AWARD COMMITTEE. All accidents should be reviewed by the installation's Safe Driver Award Committee and recorded on USPS Form 1768 (Safe Driver Award Committee Decision) which shall be filed with USPS Form 4582. Decisions should be rendered in line with the definition of a preventable accident (see examples in Section 7). Prior to rendering a decision, the overall supervisor of activity or service must discuss the accident with the driver involved as required on USPS Form 1768. When extenuating circumstances make it difficult to reach a decision and an additional opinion is necessary, the accident report may be submitted to the Regional Safety and Health Branch Manager for decision. If necessary, the Regional Safety and Health Branch Manager may submit the case to the National Safety Council's Accident Review Committee. This committee is made up of six well-known safety directors and their decision is final.

PROCEDURE FOR SUBMITTING REPORT TO THE REGIONAL SAFETY AND HEALTH BRANCH MANAGER. Reports can be submitted to the Regional Safety and Health Branch Manager for the following reasons: (1) the local Safe Driver Award Committee is unable to decide whether an accident is preventable; (2) a driver appeals and requests a review of his/her case by higher authority; (3) there is a tie vote at the local level. An original and one copy of USPS S.F. 91, USPS Form 1769 and USPS Form 1700, together with a narrative report and the minutes of the local Safe Driver Award Committee meeting should be submitted to the Regional Safety and Health Branch Manager. The Regional Safety and Health Branch Manager may designate certain Management Sectional Center Safety personnel (when they are not members of the Safe Driver Award Committee) to review and adjudicate appeals within their sectional center. Unresolved items at the Sectional center level will be forwarded to the Regional Safety and Health Branch Manager for decision.

NATIONAL SAFETY COUNCIL'S ACCIDENT REVIEW COMMITTEE. If the Regional Safety and Health Branch Manager decides to forward the report to the National Safety Council's Accident Review Committee, such report should include SIX copies of the accident report and SIX copies of all supporting documents such as diagrams, witness statements, etc. All six copies must be legible.

The letter accompanying these materials should include the decision or lack of decision. If the case represents a driver appeal, include a letter from the driver stating why the driver feels the accident should be classified non-preventable.

Following is a list of information that must be provided to the NSC Accident Review Committee. Lack of any information or failure to reconcile differences of opinion as to factual information prior to submitting the accident for review will make it necessary to return the request for further clarification:

255 Safe Driver Award Committee

255.1 Establishment

.11 Installations Having Five or More Employees with Driving Duties. Establish committees composed of the following:

- a. Overall supervisor of activity or service (superintendent of mail, foreman of mail, or other top level supervisor).

b. Safety supervisor.

c. Installation driver having the longest no-accident record (may be limited to drivers at substations or even drivers within a craft, if this facilitates functioning of committee).

d. There may be a fourth member chosen on a case by case basis who must be from the same craft as the employee involved in the accident being reviewed.

.12 Smaller Installations. Where the categories listed in 255.11 do not exist, the postal official in charge shall perform the duties of the committee.

255.2 Purpose

The committee shall evaluate accident causes for educational purposes to prevent recurrence of similar type accidents. The committee function should not be used to develop punitive or disciplinary measures.

255.3 Duties

Using the National Safety Council Safe Driver Award Rules as the only guide, each committee member will:

a. Review each accident report and related material.

b. Determine if drivers continue to be eligible for safe driving awards during the current year.

c. Record decision on Form 1768, *Safe Driver Award Committee Decision*. This must be done in time to inform the driver by the tenth working day following an accident.

255.4 Accident Classification

The safety representative will resolve disagreements on accident classification by discussion and review of the safe driver award rules. Send unresolved cases and reasons for disagreement to the regional safety staff for decision.

255.5 Decision

The safety representative will give the employee concerned a full explanation of the committee's decision. He will also review with him applicable safe driver award rules for future compliance and administering all appeals of committees decisions.

DISCUSSION
AS TO TIMELINESS

The Contract requires that a grievance be filed within 14 days of the date on which the employee or Union first learned or may reasonably ^{have} been expected to learn of its cause. From the evidence presented, there was no cause for the grievant to file a grievance until May 16th, when he received his denial on the appeal system established by the National Safety Council and confirmed by Postal Service Rules. The appeal was not an exercise in futility, but rather an effective and established method which would, without resort to the grievance procedure, resolve the complaint of the grievant. Had, at any step, the decision to deny the grievant his Safe Drivers Award been reversed, there was no grounds for a grievance. Therefore, the grievant was not truly aggrieved until his appeal procedure had run its course. The filing of the grievance on May 30th was timely, and the matter is arbitrable so far as timeliness is concerned.

AS TO SUBSTANTIVE ARBITRABILITY

While I completely agree with the Postal Service that an Arbitrator may not review the actions of the National Safety Council, I can find no basis to deny the right of an

Arbitrator to review the actions of Postal Service Management.

That is the substance of the grievance in this case. No decisions were made by the National Safety Council, as of the date of the grievance being filed. The actions taken were those of the grievant's peers and superiors, and the actions are within the control of the Postal Service, and therefore within the purview of the grievance machinery. A manager, for example, can write a false report on an employee, or refuse to timely file documents which need to be filed. The decision of the National Safety Council, based upon such false or faulty filings, could be adverse to the grievant, and there is certainly no remedy as to the National Safety Council. There is clearly a remedy available, if facts are established to show a violation of the grievant's rights, to correct any inappropriate actions taken by the Postal Service supervision. A report could be required to be rewritten, or a report could be required to be filed, if one were not properly filed. Since these matters are arbitrable, and the merits of the case may involve them, there is the possibility of a remedy being granted the grievant without in any way requiring action by agencies or parties outside of the Postal Service. The grievance is therefore patently arbitrable. No remedy may be appropriate, for no error or inappropriate action may be found to have been taken by Postal Service management, but

this does not affect the right of the grievant to challenge the action taken, and to have a determination made by an Impartial Arbitrator as to the propriety of the actions taken. The grievance is arbitrable.

AWARD

That the grievance is procedurally and substantively arbitrable; that the matter is referred back to the parties for the establishment of a date for hearing on the merits, if such hearing is necessary.

February 11, 1985
Lake Bluff, Illinois

James P. Martin
Impartial Arbitrator