

RECEIVED BY

JAN 22 1982

GERALD COHEN 1/5/82 Local/Won
Art. XXI Health Benefits-Demand for
Premium Adm. Error

33104 (C8C-4G-c)

INDUSTRIAL
RELATIONS

IN ARBITRATION

0700012

UNITED STATES POSTAL SERVICE) Case No. C8C-4G-C 33104
and) Arbitrator's File 81-118-688
AMERICAN POSTAL WORKERS UNION,) Date of Hearing:
LINDA MCGOWAN, Grievant.) October 26, 1981,
) Indianapolis, Indiana.

APPEARANCES

For the Postal Service:

MICHAEL JORDAN
Labor Relations Executive
433 W. Van Buren
Chicago, IL 60699

FROM THE OFFICE OF
JOHN P. RICHARDS
DIRECTOR
INDUSTRIAL RELATIONS
APWU AFL-CIO

For the Union:

A. G. NEWLETT
General President
ILAPWU
P. O. Box 1063
Indianapolis, IN 46206

O P I N I O N

Issue

Did the Postal Service violate the National Agreement,
Handbooks and Manuals by issuing a letter of command to Grievant
in the amount of One hundred and sixty-six and 65/100 (\$166.65)
dollars?

Facts

According to Grievant's testimony, she commenced work for

the Postal Service on October 23, 1978. Prior to that time, she had worked for the Internal Revenue Service (IRS). While employed by the IRS, she had received health benefits which were paid for by payroll deduction.

Sometime in July or August, 1978, Grievant made a claim to a health insurance carrier for a bill she had incurred while an employee of the Postal Service. She received a note from the health insurance carrier that the claim was rejected because of lack of coverage. At that time, she went to the personnel office and investigated.

Grievant stated on or about August 20, 1979, she received a notice of change in health benefits enrollment, Form #2810, which stated:

"Employee transferred to Postal Service as career appointee; however, due to administrative error U.S. Postal Service failed to transfer her insurance effective 10-23-78. Please correct to show employee covered effective 10-23-78."

The Postal Service also introduced records to show that from the pay period of November 17, 1979 to November 30, 1979, on a Form entitled, "Report of Withholdings and Contributions Continuation," it had sent a total of One hundred and twenty-one Thousand, Seven hundred and sixty-six and 14/100 (\$121,766.14) dollars to Grievant's insurance carrier. Further, the Postal Service introduced a payroll journal showing that Grievant's health benefits account

had been corrected to show payment of health benefits from the Pay Period (PP) 23-78 through Pay Period 17-79, which is approximately the pay period in question in the case.

Grievant testified that for many months after she came to work, she did not receive any pay, nor did her payroll check stub indicate a deduction. Further, the manner in which the dollar amounts were lined up were such as to make it impossible to tell what was being deducted. She further testified that she received no instruction upon her initial transfer to the Postal Service and only received instruction a number of months later, after she transferred to Machine Clerk duties. However, this instruction did not cover in detail any of the deductions taken from her pay. She further stated that some of the deductions were apparently for life insurance, and she could not tell clearly what were deductions for life insurance and what were deductions for health insurance.

Grievant further stated that the payroll stubs from the IRS and the payroll stubs from the Postal Service were entirely different and that experience in reading IRS payroll stubs would not necessarily aid her in understanding the payroll stubs issued by the Postal Service.

The Postal Service also introduced in evidence a form headed, "Recap of Health Benefits Withholding and USPS Liability PP 25 Ended 11/30/79". This form has a section that is called "Type 50 and 90 Adjustments" with an amount of Three hundred and

nineteen and 99/100 (\$319.99) dollars listed which is applicable to Grievant. This is part of a total payment shown that was made to Grievant's insurance carrier in the amount of One hundred and nineteen thousand, Seven hundred and seventy-two and 19/100 (\$119,772.19) dollars for her Plan Code (462).

Discussion and Opinion

Grievant has filed a claim for waiver for letter of demand. Whether she is entitled to a waiver of the demand is to be determined by the well-known section of the E&LR Manual, 437.6. This section states as follows:

"437.6 Action by Postal Data Center (PDC)

The PDC will waive the claim if it can determine from a review of the file that:

- a. The overpayment occurred through administrative error of the USPS.
- b. Everyone having an interest in obtaining a waiver acted reasonably under the circumstances, without any indication of fraud, misrepresentation, fault, or lack of good faith.
- c. Collection of the claim would be against equity and good conscience and would not be in the best interest of the USPS."

There is no question that Grievant was not guilty of any fraud, misrepresentation, or lack of good faith. Nor is there any question that whatever problem occurred, whether overpayment or otherwise, occurred through administrative error of the Postal Service. The question then is has there been any fault on Grievant's part, and would the collection of the claim be against equity and good conscience

and not be in the best interest of the Postal Service?

Grievant's position is simple. She states that she made a claim under the insurance coverage, and it was denied. This was what indicated to her that she had no insurance. Hence, she is being charged for insurance she never received. The Postal Service, on the other hand, argues that she did have coverage. In all candor, the Postal Service has not proven this. There were notices from the Postal Service to Grievant that the Postal Service was seeking retroactive coverage for her. I will even accept the Postal Service's claim that payment was made to the insurance carrier for this retroactive coverage, even though I can see some argument in the data submitted by the Postal Service that this is not certain. Nonetheless, there is no clear proof that Grievant did receive the coverage.

The letters from the Postal Service to the Grievant, relative to the retroactive coverage, are not sufficient to prove that the insurance carrier has accepted the retroactive establishment of the insurance. Grievant had the burden of proof of showing that she did not have coverage. She did this by her statement that her claim was rejected. If the Postal Service takes the position that she did have the coverage, it then must affirmatively prove its position. This is did not prove. It assumed that, having paid the premium to the insurance company, the insurance company then pro-

vided Grievant with coverage. This is an assumption that cannot be made without proof. There was no such proof. I, therefore, find that Grievant is being billed for something that she did not have. She further had the option at the time her lack of insurance was discovered to decide whether she wished a deduction to be made for retroactive coverage. She testified that had she been asked what her choice was, she would have refused the insurance. In effect, the Postal Service voluntarily made the payment. At the time the Postal Service made the payment, no one had been paid anything in regard to this insurance coverage and, hence, there was no loss.

The Postal Service made several contentions that Grievant should have noticed during the period of October, 1978 through August 1979 that no deductions were made for insurance benefits. As a matter of fact, that was actually what had happened. This is not a case where no deductions show and the money is paid over by the Postal Service simultaneously with a failure to deduct. In this instance, the failure to deduct on the Postal Service's part was accompanied by a failure to pay on the Postal Service's part, so the Postal Service was out no money until it voluntarily and unilaterally made the payment without the Grievant's consent. In equity and good conscience, the Postal Service should not be entitled to recover money that it did not need to pay without Grievant's consent. Further, Grievant should not be required to pay for some-

thing that she has not been proven to have received.

The grievance is sustained, and the Grievant is entitled to the One hundred and sixty-six and 65/100 (\$166.65) dollars. The costs are assessed equally.

Dated this 5th day of January, 1982.

Gerald Cohen
GERALD COHEN
Arbitrator
722 Chestnut Street - Suite 601
St. Louis, MO 63101
(314) 231-2020