

C# 10686

REGULAR ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION)

between)

UNITED STATES POSTAL SERVICE)

and)

AMERICAN POSTAL WORKERS UNION)

P. BELCHER

ST. CHARLES, MISSOURI

C7C-4Q-C 24164

BEFORE:

James P. Martin

APPEARANCES:

For the U.S. POSTAL SERVICE:

Donald L. Baker

For the UNION

Carl Casillas

Place of Hearing:

St. Charles, Missouri

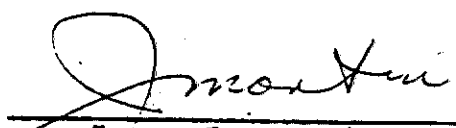
Date of Hearing:

July 6, 1990

AWARD:

That the Postal Service violated the Agreement when it deducted a claimed overpayment of salary to the grievant from a Grievance Settlement based upon an underpayment; that the grievant is to be repaid the \$640.40 improperly deducted by PDC.

July 20, 1990


James P. Martin
Impartial Arbitrator

ISSUE

Was the Postal Service in violation of the Agreement when it deducted, without prior written notice, \$640.40 from a Grievance Settlement to the grievant? If so, what is the remedy?

NATURE OF CASE

The grievant was transferred to St. Charles, but she was improperly placed in PS-5 Step B, rather than where she should have been placed, PS-5 Step D. A Grievance was filed, and settled at Step Two: "Employee will be assigned the Craft Step of Level 5 Step D effective 11-05-88. Compensation due from 11-05-88 will be processed through normal channels per a new PS Form 50." The Settlement was issued on March 17, 1989. The grievant subsequently received a check which was \$640.40 gross less than the amount due her. Mr. Ochs, Manager of Mail Processing, summarized the history of the Grievance very nicely in a Memorandum: "An adjustment on underpayment of salary due Ms. Belcher was made per the Grievance Settlement. The Union and grievant agree that the underpayment adjustment made was correct."

What is being contested is a simultaneous overpayment adjustment of salary which occurred contiguous to the underpayment. This is normal procedure by PDC, Minneapolis, with no Accounts Receivable Letter being issued for the overpayment. A complete salary history was performed by PDC to correct any and all salary discrepancies which were pending. Thus, the Postal Service recovered an existing overpayment of salary against monies due for the underpayment."

The grievant received no explanation whatsoever in advance of the deduction from her check, and so far as the evidence submitted at the Hearing goes, had not received any written notification up to that date.

According to the Union, it is absolutely necessary for the Postal Service to comply with Article 28, which states, with emphasis added,: "In advance of any money demand upon an employee for any reason, the employee must be informed in writing and the demand must include the reasons therefore." The grievant received no notice of the reason for the deduction in advance or at any other time, and the grievant was therefore deprived of the right to grieve the deduction, should she have felt it improper. The deduction was totally in violation of the Agreement, and the grievant should be made whole for such deduction.

According to Management, PDC followed its procedures exactly, and informed Local Management of the fact that the deduction was proper and correct. The grievant had been overpaid at a previous time, and, when an overall salary review was made by PDC, the overpayment was caught. It was simply adjusted out of the underpayment which was the basis of the Grievance Settlement, and the grievant was deprived of no salary to which she was entitled. The Grievance is without merit and should be denied.

APPLICABLE CONTRACT PROVISIONS

ARTICLE 28 EMPLOYER CLAIMS

The parties agree that continued public confidence in the Postal Service requires the proper care and handling of the USPS property, postal funds, and the mails. In advance of any money demand upon an employee for any reason, the employee must be informed in writing and the demand must include the reasons therefor.

DISCUSSION

The Union directed me to three Arbitration Awards bearing upon this Issue: Arbitrator Snow (W1C-5F-C 7872) who said: "...the Arbitrator concludes that the Employer

violated Article 28 of the parties' Collective Bargaining Agreement and, therefore, was not entitled to deduct the \$125.00 from the grievant's paycheck for Pay Period 16...."; Arbitrator Williams (S1C-3U-C 10157), who said: "Management violated Article 28 ~~of~~ the National Agreement by withholding funds from the paychecks of the grievants when it did not inform them in writing in advance of the demand giving reasons therefore."; and Arbitrator Jacobs (E4C-2N-C 32953), who said: "Additionally, the Employer was in error for deducting pay from Mr. Caulfield without presenting him with a Letter of Demand." This Arbitrator has also issued several Awards making the same finding. In fact, in many cases of this type which I have heard, I have never had a case cited by Management which held contrary to the cases cited above.

The language of Article 28 is clear, and leaves no room for interpretation. Supporting this is an "invoice and statement" issued by the PDC in Minneapolis, PS Form 1903-DZ, October, 1983, which contains the following language: "You must provide the employee with this invoice & one of the following Forms of Written Notice:

Collective Bargaining Unit employees - give him a Letter of Demand, required by Article 28 of the Labor

Contract & 462.3 of the ELM. This Letter must tell him of any Contract right he has to challenge the claim."

There is nothing in this case that creates an exception to the universal rule set out in Article 28, and acknowledged by PDC in their Form 1903. The grievant was to receive a sum of money for underpayment, and in processing that claim, PDC discovered an earlier overpayment. The underpayment was acknowledged by Management and the Union to be correct. No one except the PDC had formed an opinion on the validity of the claim for a prior overpayment. The reason for giving the grievant a Letter of Demand was to allow her to make such a judgement, and to grieve the action if she disagreed with the PDC. No such opportunity was ever given her, and no opportunity ever existed for her to exercise her right of challenge.

The grievant's rights were violated by the PDC, not by Local Management, but the rights granted to the grievant under the Contract apply to any level of Management. The grievant is, as a result of this contractual violation, entitled to be promptly paid back the \$640.40 improperly deducted from her Settlement check, and any claim pending by the Postal Service will have to be processed subsequent to her receipt of the reimbursement, in a manner complying with contractual requirements.