

In the Matter of the Arbitration)
 Between)
 UNITED STATES POSTAL SERVICE)
 and)
 NATIONAL ASSOCIATION OF)
 LETTER CARRIERS, AFL-CIO)

Grievant: Class Action

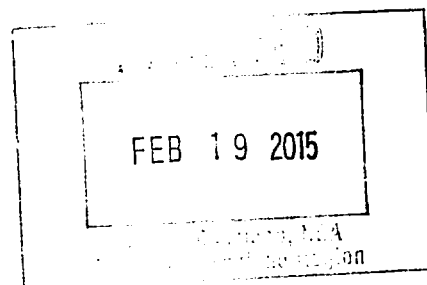
Post Office: Manchester, CT

Case Number: B11N-4B-C 14315207

Union Number: 014-06040-242

DRT # 14-320712

BEFORE: KATHERINE MORGAN, ESQ
 Arbitrator

**APPEARANCES:**

For the U.S. Postal Service:

Glenn C. Smith

For the Union:

Thomas J. Cronin, II

Place of Hearing:

Manchester, CT

Date of Hearing:

January 16, 2015

AWARD:

Date of Award:

February 9, 2015

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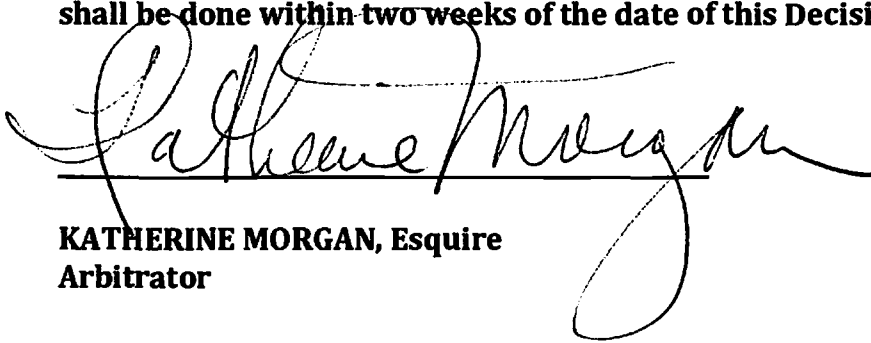
VICE PRESIDENT'S
 OFFICE
 NALC HEADQUARTERS

AWARD SUMMARY

The Grievance is sustained. There is no procedural defect. The Grievance is timely.

Management failed to abide by its Settlement Agreement in Grievance # 014-06040-187.

Management shall "donate \$1000, with interest, to the Health and Welfare Fund of the Manchester, Connecticut P.O., to be received by the NALC Union Steward and donated to the "Fund," as agreed by the parties in writing, and signed and dated August 6, 2014. This shall be done within two weeks of the date of this Decision.

A handwritten signature in black ink, appearing to read "Katherine Morgan", is written over a horizontal line. The signature is fluid and cursive.

**KATHERINE MORGAN, Esquire
Arbitrator**

ISSUES

The stipulated issue is: Did Management violate Articles 5, 15, 17, and 19 of the National Agreement, as well as the ELM, and Handbook M-39, when it failed to pay \$1000 to the Union for donation to the Manchester Health and Welfare Fund, as listed in item number 4 of the remedy requested for grievance settlement in case number 014-06040-187?

An additional issue is: Was there a procedural defect necessitating dismissal of the grievance based on untimely filing by the Union?

BACKGROUND

The Union filed Grievance 014-06040-187 on August 6, 2014. The case was settled on the same date, with Postmaster Neil Lalonde, and Union Steward Steven Siegel respectively signing for

Management, and the Union. The Agreement was written on Form 8190, with a one page lined sheet attachment, not an additional page 8190 attachment sheet. Line 19(a) of Form 8190 states "Union Representative: Enter the remedy requested by the union. "See attached" was written there. On Line 20. "Disposition," "resolved" is checked. Line 21(a) has the signature of Neil Lalonde for the Postal Service. Line 22 (a) contains the signature of Steven M Siegel for the Union. The attached sheet contains the grievance number 014-06040-187 and states "Remedy Requested by the Union." There are five (5) items listed, only one of which is in dispute in the instant arbitration hearing. The disputed item is number 4, which states: "Management will donate \$1000.00 to the Health and Welfare Fund of the Manchester P.O. to be received by the NALC Union Steward and donated to the "Fund." This will be done within (3) Business days of the resolution of this grievance and is a result of Neil Lalonde's remedy agreement parts 5) and 6) of grievance # 014-06040."

Management contends that it did not agree to item #4, and only saw and agreed to items # 1-3.

The Union contends that Management agreed to all 5 items, and reneged on Item 4.

Additionally, Management argues that the grievance is procedurally defective and should be dismissed because the grievance was filed 32 days from the date the alleged violation occurred.

The disputed provision of the settlement agreement requires the money to be paid within 3 business days of the signature date of August 6, 2014, or presumably by August 9, 2014. The Collective Bargaining Agreement (CBA) provides, in Article 15, Section 2(a) that "the Union also may initiate a grievance at Informal Step A within 14 days of the date the Union first became aware of (or reasonably should have become aware of) the facts giving rise to the grievance."

An Arbitration hearing was held on January 16, 2015 where both parties were present, and had the opportunity to present sworn witnesses, engage in both direct examination, and cross examination, adduce evidence, and make opening and closing oral argument, with supporting cases. Management presented one witness, Neil Lalonde, Postmaster Manchester Connecticut Post Office. The Union presented one witness, Steven Siegel, Union Steward. All witnesses testified under oath.

RELEVANT CONTRACT PROVISIONS

COLLECTIVE BARGAINING AGREEMENT:

Article 5: "The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the national Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law."

Article 15 (in relevant part):

Section 2. Grievance Procedure---Steps:

Informal Step A:

(a) "The Union also may initiate a grievance at Informal Step A within 14 days of the date the Union first became aware of (or reasonably should have become aware of the facts giving rise to the grievance. In such case the participation of an individual grievant is not required. An informal Step A grievance may involve a complaint affecting more than one employee in the office."

(b) "In any such discussion the supervisor shall have authority to resolve the grievance. The steward or other Union representative likewise shall have authority to resolve the grievance in whole or in part. The local parties are not prohibited from using the Joint Step A Grievance Form to memorialize a resolution reached at an Informal Step A Meeting. No resolution reached as a result of such discussion shall be precedent for any purpose."

(c) " If no resolution is reached as a result of such discussion, the Union shall be entitled to file a written appeal to Formal Step A of the grievance procedure within seven (7) days

of the date of the discussion. Such appeal shall be made by completing the Informal Step A portion of the Joint Step A Grievance Form. At the request of the Union, the supervisor shall print his/her name on the Joint Step A Grievance Form and initial, confirming the date of the discussion."

Formal Step A:

(a) "The Joint Step A Grievance Form appealing a grievance to Formal Step A shall be filed with the installation head or designee."

Section 3. Grievance Procedure---General

A. "The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in resolution of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end. At each step of the process the parties are required to jointly review the Joint Contract Administration Manual (JCAM)."

B. "The failure of the employee or the Union in Informal Step A, or the Union thereafter to meet the prescribed time limits of the Steps of this procedure, including arbitration, shall be considered as a waiver of the grievance. However, if the Employer fails to raise the issue of timeliness at Formal Step A, or at the step at which the employee or Union failed to meet the prescribed time limits, whichever is later, said objection to the processing of the grievance is waived."

C. "Failure by the Employer to schedule a meeting or render a decision in any of the Steps of this procedure within the time herein provided (including mutually agreed to extension periods) shall be deemed to move the grievance to the next Step of the grievance-arbitration procedure."

RELEVANT LETTER

Patrick Donahoe, May 31, 2002 (current Postmaster General USPS)

Subject: Arbitration Award Compliance:
(in relevant part)

"Compliance with arbitration awards and grievance settlements is not optional. No manager or supervisor has the authority to ignore or override an arbitrator's award or a signed grievance settlement. Steps to comply with arbitration awards and grievance settlements should be taken in a timely manner to avoid the perception of non-compliance, and those steps should be documented."

Procedural Issue—Timeliness of grievance

POSITION OF MANAGEMENT

The Union's alleged remedy in the settled grievance which gave rise to this dispute provided that Management donate the funds within three (3) business days of the Settlement. Since the Settlement was on August 6, 2014, the funds should have been donated within three business days—by August 9th. August 9, 2014 would therefore be the beginning of the tolling of the fourteen (14) day limitation period for filing or initiating the grievance at Informal Step A under Article 15 Sec 2(a) of the CBA. The Union breached this section by initiating the grievance on September 10th, 32 days later. The Union waited 32 days to meet with the Supervisor to discuss the issue, in violation of Article 14, Section 2(a).

This is not a continuing violation because the Union knew about the provisions and dates in their own alleged requested remedy in the previous settlement. When there was no payment by the Union's alleged requested date of August 9th, the Union had only 14 days to meet with the Supervisor to discuss the issue. The Union did not meet with the supervisor within 14 days. Therefore, the instant Grievance must be dismissed as untimely under the CBA.

POSITION OF UNION

The Union Steward (Siegel) who had negotiated the pertinent Settlement giving rise to the instant Grievance, spoke to the Management representative (Postmaster Lalonde) about why the funds had not been donated, on the third business day after the Settlement was signed. Postmaster

Lalonde informed him that the latter had to bring up the issue again at the next Management meeting on September 23rd, and could not give him an answer now. Union Steward Siegel therefore waited until the September 23rd meeting, which he also attended. At that meeting Management refused to honor provision #4 of the Settlement Agreement, by refusing to donate the \$1000 to the Union Fund. The Union then, on September 25, 2014, timely filed the instant Grievance at Formal Step A.

The refusal by Management to pay the agreed upon \$1000 constitutes a continuing violation which is not subject to the CBA time limitations, under the JCAM, pages 15-2 and 15-3.

DISCUSSION: PROCEDURAL ISSUE—TIMELINESS

There is no dispute regarding the signing on August 6, 2014 by Management and the Union of a settlement in a grievance giving rise to the instant one. (# 014-06040-187) (There is a dispute about the provisions).

The instant grievance involves a dispute about a provision that Management donate \$1000, within three business days of the resolution of the prior grievance to the "Health and Welfare Fund of the Manchester PO." (the "Fund") There is no disagreement that a settlement agreement was signed by both parties on August 6, 2014. The precise date of three **business** days later was not discussed at the Arbitration hearing or in the evidence. Therefore the Undersigned Arbitrator finds that the date would be August 9, 2014.

The evidence shows that a Formal Step A Grievance was filed by the Union on September 25, 2014 regarding the instant grievance. It also shows that Management properly raised a timeliness issue.

The evidence shows that on the Joint Step A Grievance Form ("8190"), the Union listed the "Incident Date" as "9/10/14." The reason for selecting this date was not raised at the Arbitration hearing. The "date discussed with supervisor" is listed on the "8190" as "9/24/14," and the Union and Management signature dates are both "9/25/14."

The Union witness, Union Steward Siegel credibly testified that he questioned Postmaster Lalonde about the donation of the funds after three days had passed from the signing of the settlement. Although witness Siegel never gave the precise date, he was not asked this on either direct or cross-examination. Union Steward Siegel also testified credibly, and undisputedly, that Postmaster Lalonde told him that the issue of payment to the "Fund" would have to be brought up at the Management Meeting on either September 23 or 24, 2014. This was not disputed by Management witness, Postmaster Lalonde. Both Union witness Siegel, and Management witness Postmaster Lalonde testified that they both attended a Management Meeting on or about September 23 or 24, 2014 where the issue of the payment to the "fund" was discussed. There is likewise no dispute that Management informed the Union at that Meeting that the \$1000 would not be paid to the "Fund."

Therefore, the Undersigned Arbitrator finds that it is undisputed that Union Steward Siegel questioned Postmaster Lalonde about the donation within three business days after the August 6th settlement, even if the exact date is unclear. It is not in the record as to why the Union wrote the incident date as "9/10/14," but this is not relevant for a resolution of the timeliness issue because the Undersigned Arbitrator finds that the Informal Step A process was initiated by the Union's timely questioning of Postmaster Lalonde on the subject of payment to the Union "Fund" of the \$1000, and being told essentially that they must wait for an answer until the Management Meeting of either September 23 or 24, 2014. The evidence supports the conclusion that the Union

was not informed by Management that it did not intend to pay the \$1000 until September 23, or 24, 2014. The Union, thus, timely questioned Management about the payment and agreed to wait until the September 23 or 24th Management Meeting to hear Management's final decision. This would constitute a timely discussion since it began before the 14-day limitation period ended, even if the time period is seen to commence on August 9, 2014, as set forth by Management. There is no requirement in Article 15, section 2(a) that the informal Step A grievance be in writing.

The formal Step A Grievance was filed by the Union on July 25, 2014, well within the requisite seven days after the date of the Management Meeting, or "discussion," as set forth in Article 15, Section 2(c), and is not in dispute.

Based on the above, the undersigned Arbitrator finds that the instant grievance was timely filed by the Union; is therefore not procedurally defective; and should not be dismissed. Accordingly, the Union's argument regarding continuing violation need not be addressed herein.

SUBSTANTIVE ISSUES

Grievance # 014-06040-187 was filed by the Union on August 6, 2014. It was settled by Postmaster Lalonde and Union Steward Siegel on the same day. The settlement was memorialized on an "8190" Form, with an attached sheet containing the resolution specifics, in accordance with long-standing past practice and custom in the Manchester Post Office. The attached sheets sometimes are "8190" continuation sheets and sometimes just plain paper. The

attached sheet in this case was on plain lined paper and contained 5 provisions. These were all agreed to by the parties, as seen by the check-off "resolved," and signatures on the "8190" form. After settlement Management failed and refused to pay \$1000 into the Union "Fund" as agreed upon. Management had the contractual right to make such an agreement under Article 15, and likewise had the obligation to act in good faith in resolving the grievance. Furthermore, Management was obligated to follow the directive of current Postmaster General Donahoe's 2002 Letter setting forth that grievance settlement compliance is not optional, and must be timely complied with.

Management violated Article 15, and the Donahoe letter of 2002 by failing to abide by its agreement in Grievance # 014-06050-187. Management should be directed to donate the \$1000 to the Union "Fund" within 7 days of the Arbitration Decision.

The Grievance should be sustained.

POSITION OF MANAGEMENT

Postmaster Lalonde only agreed to the provisions he was given by the Union, which were provisions 1 through 3 of the settlement on Grievance # 014-06050-187. Postmaster Lalonde was never shown provisions 4 and 5. These were added on by the Union after settlement, and attached on a separate sheet, not the regular "8190" continuation sheet. This attachment does not contain the initials or signatures of the parties and is not genuine. It contains merely the Union's requested remedy, not the agreement between the parties.

Postmaster Lalonde never discussed paying any monetary damages to the Union. Postmaster Lalonde would never have agreed to a monetary settlement because every grievance, which cannot be resolved without a monetary settlement, is sent by him to the B Team for resolution.

Postmaster Lalonde would not even know how to make a payment to a Union fund as there is no provision to make this type of payment in his computer system. Therefore, he would never have agreed to this.

The Union's purported settlement on the attached sheet violates past practice and custom, which consists of attaching an "8190" continuation sheet if necessary.

The Union has shown no harm to anyone. Therefore an arbitrator may not award punitive damages in a contractual case.

The grievance should be dismissed.

DISCUSSION AND OPINION

The Undersigned Arbitrator carefully examined eighteen (18) resolved grievances in evidence. All but one were resolved by Postmaster Lalonde and Union Steward Lalonde at or before Formal Step A of the grievance process in the Manchester Connecticut Post Office during 2012 through 2014. The one exception was resolved by Paul Buttafooco for Management at the Manchester Post Office, with Steward Siegel (Grievance# 017-06040-190; signed 8/15/12)).

Each and every resolved grievance was written, and signed on a Form 8190, USPS-NALC Joint Step A Grievance Form, page 1. Each one had box 20, p1, "Disposition," checked of with "resolved." Likewise did each one have box 19a, page 1, "Union Representative: Enter the remedy requested by the Union," marked by either "see attached," or by remedies written in. Each one contained on the page 1, 8190 Form, identifying information for the grievance, issue statements, and relevant contract provisions.

Four of the resolved grievances had no attachments because the entire remedy was written into box 19a on page 1 of the Form 8190. These grievances are:

- 1) 014-06040-104 (signed 7/23/13);
- 2) 014-06040-164 (signed 9/11/13);
- 3) 014-06040-076 (signed 3/26/14));
- 4) 014-06040-116 (signed 8/16/14)

Fourteen of the resolved grievances stated in box 19a, "see attachment." Eleven of these had attachment sheets, which were Form 8190 continuation sheets.

These resolved Grievances are:

- 1) 014-06040-134 (signed 7/31/13;
- 2) 014-06040-135 (signed 7/31/13);
- 3) 014-06040-214 (signed 10/14/13);
- 4) 014-06040-216 (signed 10/25/13);
- 5) 014-06040-217 (signed 11/15/13);
- 6) 014-06040-028 (signed 7/30/14);
- 7) 014-06040-154 (signed 7/30/14);
- 8) 014-06040-215 (signed 8/21/14);
- 9) 014-06040-118 (signed 8/21/14);
- 10) 014-06040-177 (signed 8/31/14);
- 11) 014-06040-232 (signed 9/23/14).

Three of the resolved grievances had attachments consisting of plain, lined paper, not a continuation sheet from Form 8190.

These resolved grievances are:

- 1) 014-06040-190 (signed 8/15/12) (signed by Bootafooco for Management, and Siegel for Union;
- 2) 014-06040-188 (signed 8/6/14) (signed by Lalonde and Siegel);
- 3) 014-06040-206 (signed 8/21/14) (signed by Lalonde and Siegel).

Only one of all the 18 resolved grievances was signed on the attachment sheet. And that was by Management representative Bootafooco, not Postmaster Lalonde. (#014-06040-190). No other attached sheet was signed by either Postmaster Lalonde or Steward Siegel, both of whose names appear on 17 of the 18 resolved grievances.

Based upon a close and careful scrutiny of the 18 resolved grievances in the record, the Undersigned Arbitrator finds that the overwhelming evidence shows that attachment sheets are not signed or initialed, regardless of whether they are on continuation form 8190 sheets, or on plain lined paper. (with the Bootafooco exception noted above) Neither are the attachment sheets headed or titled "Settlement Agreements." The plain lined sheets in the grievances settled by Postmaster Lalonde and Union Steward Siegel have: "Union Representative : Enter the remedy requested by the Union" as titles or headings (See grievances # 014-06040-188 and 014-06040-190). All the grievances settled with Form 8190 continuation sheets attached have box 19b "Union Settlement Offer" filled in.

When Postmaster Lalonde was questioned, under oath, about the three attachments on lined paper, and not on Form 8190 continuation sheets, he responded with: "Maybe they are not settlements." He said this even though his signature was on two of them, and "resolved," was

checked off on page 1. The Undersigned Arbitrator finds that this response does not constitute a credible explanation.

Based on the above objective evidence in the record, it is clear that the pattern and practice in the Manchester Post Office--involving the same parties and representatives as the instant case, Postmaster Lalonde, and Union Steward Siegel-- has been to resolve grievances on the Form 8190 page 1, with attachments of either Form 8190 continuation sheets or plain lined paper, with neither initials, nor signatures on the attachment sheets. It is further clear that the terms and conditions of the settlements are contained under "Union Settlement Offer," or "Remedy requested by the Union," and are not labeled by such words as settlement agreement or remedy agreed upon.

That pattern and practice was followed in the settlement that gave rise to the instant grievance. Although Management alleged that the Union added on the provision regarding the \$1000 donation to the Union "Fund," there is no evidence in the record supporting the existence of a different agreement.

Moreover, Management's argument that Postmaster Lalonde could not have agreed to the payment to the Union because he lacked ability to pay a fund is discredited by the clear evidence of the history of settlement practices between Postmaster Lalonde and Union Steward Siegel at the Manchester Post Office.

Management is bound by the agreement it made with the Union. This is not an issue of "punitive damages," as alleged by Management. The issue is, as stated by the current Postmaster General, Donahoe, his 2002 letter:

“Compliance with arbitration awards and grievance settlements is not optional. No manager or supervisor has the authority to ignore or override an arbitrator’s award or a signed grievance settlement.”

In this case, Postmaster Lalonde, himself, signed the agreement. He cannot now claim he could not have signed the agreement. Management cannot now refer to an enforcement of the agreement it signed as “punitive damages.”

Based on the above, the Undersigned Arbitrator finds that Management violated the Collective Bargaining Agreement, Article 15, when it failed and refused to pay \$1000 into the Union “Fund” at the Manchester Connecticut Post Office, after agreeing to do so in a settlement agreement.

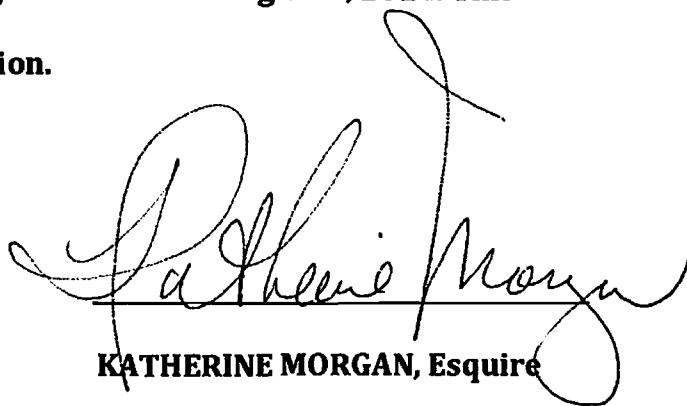
AWARD

The Grievance is sustained. There is no procedural defect. The Grievance is timely. Management failed to abide by its Settlement Agreement in Grievance # 014-06040-187. Management shall “donate \$1000, with interest, to the Health and Welfare Fund of the Manchester Connecticut P.O., to be received by the NALC Union Steward and donated to the

"Fund," as agreed by the parties in writing, and signed and dated August 6, 2014. This shall be done within two weeks of the date of this Decision.

2-9-15

DATE

A handwritten signature in cursive script, reading "Katherine Morgan", written over a horizontal line.

KATHERINE MORGAN, Esquire

Arbitrator