

C#01625

IN THE MATTER OF ARBITRATION BETWEEN)
National Association of Letter Carriers,)
Branch 4099)
-and-)
U.S. Postal Service)
Mount Prospect, IL)
OPINION AND AWARD)
Case No. C8N-4A-C 9520)
(Grievance of W. Biela))
Mt. Prospect, IL)
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The hearing in the above-matter was held on July 20, 1981 in Mt. Prospect, Illinois before Bernard Dobranski, designated as Arbitrator in accordance with the provisions of the Collective Bargaining Agreement in effect between the parties.

Appearances: Ronald Chedeck
For the Union

J. K. Hellquist
For the Employer



Full opportunity to present evidence was afforded the parties. The parties chose not to file post-hearing briefs.

ISSUE

The issue presented in this case is the threshold one of whether the grievance was untimely filed, and, if so, whether it be dismissed.

BACKGROUND FACTS

On December 14, 1978, the grievant, Wally Biela, submitted a Form 1547 indicating his vacation selections for 1979. Kranz, the Manager of Mail Processing at the time, returned the form to him because it was filled out incorrectly. That same day a second Form 1547 was submitted to Kranz. When Biela submitted the second form he indicated to Kranz that if he did not get his

first choice of vacations he would file a grievance.

On January 13, 1979, the vacation schedule was posted by Kranz in the Mt. Prospect Post Office. It was apparently not to the grievant's liking because it required him to take two weeks together.

On January 29, 1979, sixteen days after the vacation schedule was posted, a grievance was filed on behalf of Biela. On January 31, a Step 1 meeting was held with the grievant, and the grievance was denied. Among the reasons for the denial was the fact that the grievance was untimely filed. (Employer Exhibit 2, Kranz's notes of that meeting.)

On February 19, 1979, the grievance was reduced to writing and taken to Step 2. (Employer Exhibit 3). It stated:

Mr. Kranz told Wally Biela that if he did not pick two weeks together that he would have to forfeit 40 hours of annual leave, Mr. Kranz stated that Wally would have to sign a statement, stating that he would forfeit the third week. (Employer Exhibit 3).

On February 22, the Step 2 denial was issued by Postmaster Palubicki. Among the reasons for the denial was the grievance was not filed in a timely manner. (Employer Exhibit 5).

The grievance was then appealed to Step 3 and, on July 6, 1979, Malurski, a Postal Service Labor Relations Specialist, confirmed a mutual agreement to remand the grievance to Step 2 for a full development of all the facts and further consideration. (Employer Exhibit 4). Although the record is not entirely clear, apparently the reconsideration at Step 2 did not take place or, if it did, it did not result in agreement.

On September 17, 1979, the grievance was refiled.

It stated:

August 31, 12 noon-Post Office. Kranz advised Mr. Biela, he had to take the following week off because he had picked it, which is untrue, Mr. Kranz said he had to take two weeks together on a grievance filed on 2/19, the settlement was that Mr. Biela would not have to take two weeks together.

On October 3, 1979, the Step 2 denial was issued. Among the reasons given for the denial was the untimely filing of the grievance. The Postal Service also denied again that a settlement was ever reached.

On October 16, 1979, the Union appealed to Step 3, and, on October 18, the Step 3 denial was issued. The matter subsequently was certified for Arbitration.

The Postal Service presented its case primarily through the testimony of Kranz and Palubicki. Their testimony in essence confirmed the facts outlined above. Both also denied that any oral or written extention of the time period for the filing of the grievance was ever agreed to by the Postal Service.

The Union presented its case primarily through the testimony of Dolney, the Union president for the past 14 years and the chief steward, and the grievant, Wally Biela. Dolney stated that he became aware on January 24 of the possibility of a grievance by Biela. He tried to discuss this with Kranz before he filed a grievance but Kranz was too busy to discuss it at the time. It was not until January 29 when Dolney was finally able to talk to Kranz after trying to see him for four or five days. Dolney assumed that Kranz automatically granted an extension of the time to file the grievance by the refusal to talk to Dolney about the possibility of a grievance when Dolney

first approached him. He assumed this because this normally was the case when he dealt with another supervisor at the station.

Dolney further testified that after the grievance was remanded on July 6 to Step 2, he requested a discussion of it with the Postmaster. They "hassled" over the grievance and the Union never did get a final decision from the Postmaster. On the advice of David Bybee, the National Business Agent for NALC, Dolney filed another grievance on September 17, 1979, which is the grievance now before the Arbitrator. On cross examination, Dolney acknowledged that he was aware that under the Agreement if the employer fails to schedule a meeting or render a decision the grievance can automatically be taken to the next step. He also stated that he was not sure that the deadline for filing Biela's grievance was really January 27 because he was not certain that the vacation schedule was posted on January 13.

Biela in his testimony confirmed that he spoke with Kranz on December 14. In essence he told Kranz that if he did not get his first choice of vacation, he would file a grievance.

It is upon these facts that the case now comes before the Arbitrator.

POSITIONS OF THE PARTIES

Postal Service's Position

The Postal Service position is that the grievance was untimely filed and, therefore, cannot be resolved on the merits by the Arbitrator. The vacation list was posted on January 13, 1979. Consequently, this is the date that the Union first became

aware of or reasonably should have become aware of the facts giving rise to a grievance. Article XV, Section 2, Step 1(a) of the Agreement requires that the grievance must be initiated within fourteen days of that date. The first grievance, however, was not filed until January 29, two days after the expiration of the deadline. Moreover, no waiver of the time limits was ever granted to the Union.

For these reasons, the grievance should be dismissed as untimely filed.

Union's Position

The Union argues that a waiver or extension of the time limits was granted in this case. It further suggests that it is not certain that the grievance was untimely filed. In this connection, it challenges the credibility of the Postal Services witnesses that the vacation schedule was posted on January 13.

For these reasons, the Arbitrator should find that the grievance was either not untimely filed or, if untimely filed, that an extension was granted, and should proceed to hear and resolve the grievance on the merits.

DISCUSSION AND OPINION

For the reasons set forth below, it is my conclusion that the grievance was untimely filed and, therefore, it should be dismissed.

The determination of the instant grievance requires the resolution of two separate questions: first, whether the grievance was untimely filed; and second, if so, whether the grievance should therefore be dismissed.

As to the first question, the answer is that it was untimely filed. The evidence conclusively and credibly established that the vacation schedule was posted January 13, 1979.¹ That day thus became the day when the Union or the grievant first became aware of or reasonably should have become aware of the facts giving rise to the grievance. Under Article XV, Section 2, Step 1(a), the Union or the grievant had 14 days, or until January 27, to file the grievance. It was not filed, however, until January 29, two days after the deadline expired. Thus the grievance was untimely filed unless the time limits were waived or extended, or unless circumstances existed under which it would be unreasonable to require strict compliance with the time limits specified in the agreement.

No such waiver, or extension, or circumstances exist in this case. Clearly there was no written or explicit oral waiver of the time limits by any management official. The Union, however, asked the Arbitrator to imply such a waiver. In this regard, it relies

¹ The Union suggested through the testimony of Dolney that the schedule was not posted on January 13. In effect Dolney stated that he did not know if it was posted on January 13 because he did not see it posted and thus it possibly could have been posted after that date. The testimony of Kranz, however, was most emphatic and persuasive on the posting date and I find the schedule to have been posted on January 13, 1979.

Nor was Postmaster Palubicki's testimony unreliable because he only approximated the time of the December events but was specific that January 13 was the day the schedule was posted. His testimony in this regard impressed me as nothing more than an attempt to be cautious. It neither destroyed his credibility nor, more importantly, the credibility of Kranz's testimony that he posted the vacation schedule on January 13.

upon the testimony of Dolney that he assumed that he was automatically given such a waiver because of Kranz's inability to talk when Dolney first approached him. In Dolney's view, an automatic extension of the time limits is implied whenever a supervisor is unable to meet with the Union representative. In support of this view, Dolney pointed out that another supervisor in the same office would regularly grant an extension of the time limits in such circumstances.

I cannot agree that a waiver should be inferred because the supervisor might have been too busy to meet with the union steward when so requested. If the Union believed that Kranz was stalling or behaving in a dilatory fashion, it had ample recourse under Article XV, Section 3(c) of the Agreement. All it needed to do was file a grievance and, if Kranz failed to schedule a meeting, automatically move it to the next step. Dolney, who has been president of the Union for 14 years, must have been aware of such procedure. In these circumstances, no waiver of the time limits by the Postal Service took place.

The second issue to be addressed is whether this failure to observe the time limits should result in the dismissal of the grievance.²

The parties clearly and unambiguously expressed an intent in

² The Union at the hearing did not appear seriously to contest the conclusion that the grievance should be dismissed if found to be untimely filed and not to have been waived. However, the Arbitrator believes that at least a brief explanation as to why the dismissal should take place is desirable.

Article XV, Section 2, Steps 1(a) and (b) that grievances be filed and processed in strict compliance with the time limits set forth therein. The motive for adopting such procedure is obvious: it is to provide for the timely and orderly movement of grievances through the grievance procedure to the arbitration stage, if necessary. No matter how desirable it may be to resolve disputes on the merits rather than for technical or procedural reasons, the Arbitrator must enforce that intent. Accordingly, I conclude that since the grievance was untimely filed I am without the power to resolve the grievance.

In summary, the vacation schedule was posted on January 13, 1979; any grievance arising out of that posting should have been filed no later than January 27, 14 days after the schedule was posted; the grievance was not filed, however, until January 29; since no waiver, either oral or written, was granted by the Postal Service, the grievance was untimely filed, and, therefore, should be dismissed.

AWARD

For all the reasons set forth above, the grievance was untimely filed and, therefore, is dismissed.

September 29, 1981
South Bend, Indiana



Bernard Dobranski
Arbitrator