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EASTERN AREA REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS

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Before:

Jonathan I. Klein,
Arbitrator

Appearances:

For the Postal Service:

Dean A. Rogers
Labor Relations Specialist

For the Union:

Morgan M. Foster
NALC Local Business Agent

Place of Hearing:

Merrifield, Virginia

Date of Hearing:

February 6, 2008

Briefs Filed:

February 28, 2008 - Union
April 15, 2008 - Postal Service

Date of Award:

July 22, 2008

Relevant Contract Provisions:

Article 16

RECEIVED

Contract Year:

2001 - 2006

SEP - 8 2008

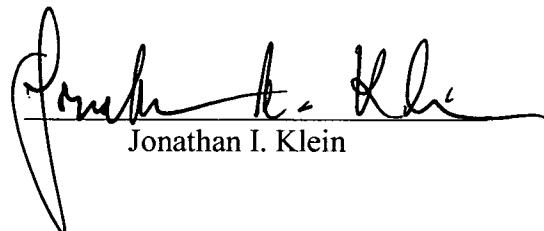
Type of Grievance:

Discipline

VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS

AWARD SUMMARY

The grievance is not arbitrable as the shop steward who filed the grievance was not properly certified in accordance with Article 17 of the National Agreement.



Jonathan I. Klein

APPEARANCES

For the Postal Service:

Dean Rogers
Dennis E. Voorhees
Judith O'Hara
Roger Kisamore

District Complement Coordinator
Mngr., Post Office Operations
Postmaster, Winchester, Virginia
Supervisor Cust. Service, Woodstock,
Virginia

For the National Association of Letter Carriers:

Morgan Foster
Phyllis Deane
R. Michael Reynolds
Lisa Goodnight

Arbitration Advocate
Postmaster, Woodstock, Virginia
NALC Branch 3376 President
Grievant

STATEMENT OF ISSUES

1. Whether the grievance is not arbitrable due to the failure of the Union steward to be properly certified as required by Article 17.2.A of the National Agreement?
2. If the grievance is arbitrable, did the Postal Service have just cause to discharge the grievant for failing to be regular in attendance and follow instructions?

STATEMENT OF FACTS

The grievant, Lisa Goodnight, was issued a notice of removal dated October 31, 2007, for “failure to be regular in attendance/failure to follow instructions.” (Jt. Ex. 2 at 28). At hearing, the Postal Service initially presented the issue of whether the grievance was arbitrable due to the lack of proper certification in accordance with Article 17.2.A of the National Agreement.

Section 2. Appointment of Stewards

- A. The Union will certify to the Employer in writing a steward or stewards and alternates in accordance with the following general guidelines. . . The selection and appointment of stewards or chief stewards is the sole and exclusive function of the Union. Stewards will be certified to represent employees in specific work location(s) on their tour; provided no more than one steward may be certified to represent employees in a particular work location(s).
- B. At an installation, the Union may designate in writing to the Employer on Union officer actively employed at that installation to act as a steward to investigate, present and adjust a specific grievance or to investigate a specific problem to determine whether to file a grievance.

The J-CAM, page 17-2 states, in pertinent part:

Steward Certification. Article 17.2A obligates the NALC to certify each steward and alternate to the employer in writing. Once certified, the steward represents employees in a specific work location. . . .

The grievance was initiated by the local branch president, R. Michael Reynolds.

Management first dealt with Reynolds as a “Union steward” commencing on October 24, 2005. (Testimony of Reynolds; Union Exhibit 2). The evidence of record indicates Reynolds met with local management in his capacity of “steward” approximately four times prior to June 1, 2007. On June 1 Reynolds and Dennis E. Voorhees, manager of post office operations, met to discuss another grievance, grievance no. 07-04, which also involved the grievant. (Union Ex. 2 at 5).

Prior to the Formal Step A meeting concerning grievance no. 07-04, but after the Informal Step A, Voorhees wrote to Reynolds on June 12, 2007, requesting “a copy of the letter that designates you as the certified steward for the Woodstock Post Office.” (Postal Ex. 1 at 2). Reynolds received the request by certified mail the next day, June 13. In management’s contentions prepared for Item 18 of PS Form 8190 dated June 19, 2007, concerning grievance no. 07-04, Voorhees wrote, in part:

It is also management’s contentions that this grievance was improperly filed. The union has not provided the requested information to show that Mr. Reynolds, who is acting as a steward for this grievance, is properly certified to file grievances on behalf of Woodstock employees. (Postal Ex. 1 at 1).

According to Voorhees and undisputed by Reynolds, when the issue of proper certification had been raised prior to June 1, 2007, Reynolds responded: “they [the Union] told me to do it” or “they told me to file it.” After requesting proper certification from Reynolds

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NALC DRT No. 13-13-086050**

during Formal Step A of the grievance procedure surrounding grievance No. 07-04, Reynolds appears to have acted as a steward once more on August 14, 2007, involving grievance No. 07-05, before the current grievance was handled at Informal and Formal Step A involving the grievant's notice of removal. (Joint Ex. 2 at 11). In management's Formal Step A contentions, the acting Manager of Post Office Operations, Judith O'Hara, denied the grievance on the merits while also noting the procedural defect in that Reynolds had not been certified as the Union steward. (Joint Ex. 2 at 13).

R. Michael Reynolds testified that he submitted his certification to management on February 4, 2008, only two days before the arbitration hearing, because he "read Article 17 and found a requirement for it," and he had "discussed the certification with the Union's advocate" for the arbitration hearing. On cross-examination, Reynolds admitted he first became aware of the "certification" issue at a Step A meeting with Voorhees in July 2006, but until the week before the arbitration hearing he did not "know it had to be in writing." Reynolds further acknowledged that he did speak about the need for certification after July 2006 with Judith O'Hara. Upon the impasse decision issuing in this case, Reynolds testified he read Article 17 more closely, and admitted he was asked for proper certification by certified mail on June 13, 2007.

CONTENTIONS OF THE PARTIES

Due to the dispositive nature of issue number 1, the positions of the parties are discussed as they touch upon the question of steward certification.

The Postal Service reasons that as set forth in Article 17.2.A, Section 2, the Union must notify management in writing of a steward's certification, and that the failure to do so represents a fatal defect. Not only did the Union fail to properly certify Reynolds, in writing, as a steward, any claim that such error must be excused by past practice must fail. The contract language is clear and unambiguous. Further, the Union was placed on notice that no written certification for Reynolds was on file. Any failure to raise the defense of lack of certification in prior Informal and Formal Step A's is irrelevant, as written certification is not optional, and it is a fatal defect which cannot be cured by producing a certification the week before the arbitration hearing. The late production of a written certification is evidence the Union knew it was in error.

To the extent the local president may claim ignorance of Article 17's certification process, his ignorance offers no basis for relief. This is so do to the fact he was placed on notice during a previous grievance of the fact he was not properly certified. Arbitral precedent establishes that grievances have been denied due to improper certification, and if the local president is to perform representational duties, he must be certified in writing. Here, there was no written certification in effect at Informal and Formal Step A.

For its part the Union recognizes the fact that the steward was not certified in writing, but maintains the local branch president had been acting as a steward since 2005 and was

acknowledged as such by management. Indeed, since 2005 management has not required a steward certification in writing despite having met with Reynolds on at least eight grievances, as well as his participation in pre-disciplinary investigations, formal discussions and grievance handling. Management's own grievance tracking document, Union Ex. 1, notes Reynolds to be the shop steward. Local management has even directed Reynolds to perform shop steward duties and to that extent it established its own past practice of employing Reynolds as the shop steward.

Although Voorhees requested proof of certification from Reynolds on June 12, 2007, he met with Reynolds acting as a Union steward after that date. Despite Voorhees raising this issue in the past, the Step B team simply ignored this contention and sustained a past grievance. Reynolds was the lone Union representative in a small office, and he knew he had to file grievances in accordance with Article 15.2. He believed certification was attending a class, and he did not ignore the requirements of Article 17. Since management knew that Reynolds was the steward and required him to act as such, this procedural argument is nothing more than a fraudulent attempt to remove the grievant without just cause.

OPINION AND ANALYSIS

As noted above, the threshold issue is whether local Union president Reynolds was duly certified as a Union steward and therefore eligible to file the grievance in this matter.

This issue has been addressed in a number of arbitration awards involving the parties. In Case No. B00M-4B-D05071680 (2006) (Javits, Arb.), management argued that the grievance

was inarbitrable since the local union president was not properly certified to act as a Union steward as the circumstances warranted under Article 17.2.B. The Union had provided written notification that it designated the local president as steward, but failed in the arbitrator's view to identify with specificity the problem or grievance to which it wished to assign the local president as required under Article 17.2.B. Finding the grievance procedurally defective and non-arbitrable under the National Agreement, the decision notes that even if the local president was considered the Tour 3 steward, he was without authority to file a grievance on behalf of a Tour 2 employee.

In a case involving the termination of an employee, the arbitrator was faced with the question of whether the grievance was arbitrable based on the question of whether a steward certification was proper. Case No. C00C-4C-D 04081424 (2004) (Tranen, Arb.). The arbitrator ruled that the stewards were improperly certified, and as such he was required by Article 15.4.A.6 to follow the contractual provision and find the issue non-arbitrable. In a decision by Arbitrator William Holley, Jr., he cited numerous arbitration decisions in concluding that the failure of the Union to properly certify the shop steward who filed the grievance in accordance with Article 17 rendered the grievance non-arbitrable. Case No. H00T-1H-C 03036587 (2004) (Holley, Arb.).

Whether management dealt with Reynolds as if he were the Union's duly certified steward is immaterial. As Article 17.2.A states: "The selection and appointment of stewards or chief stewards is the sole and exclusive function of the Union." Management, despite requesting

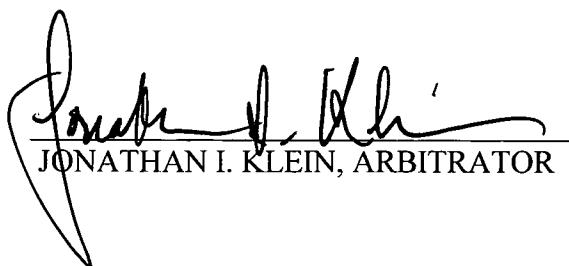
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NALC DRT No. 13-13-086050**

a member of the Union to appear at a PDI or file a grievance, is without power to cause that employee to become a Union steward – that power resides exclusively with the Union by contract and certification, as well as any controlling statutory authority. Simply instructing Reynolds to file a grievance or appear at a disciplinary meeting does not confer upon him the authority to act as a duly certified steward.

In this case management gave Reynolds notice that his steward certification was an issue well before invoking its current claim of inarbitrability. No written certification as required by Article 17 was made until February 4, 2008 – long past Reynolds's activities of investigating, presenting and/or adjusting this grievance without contractual authorization. For these reasons, the grievance is not arbitrable.

AWARD

The grievance is not arbitrable.



JONATHAN I. KLEIN, ARBITRATOR

Date of Issuance: July 22, 2008