

C#02875

In the Matter of Arbitration

between

Case No. H8N-5K-14893

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS

APPEARANCES: Francis J. Boughan for the Postal Service;
Keith E. Secular, Esq., for the Union

DECISION

This grievance arose under and is governed by the 1978-1981 National Agreement (JX-1) between the above-named parties. The undersigned having been jointly selected by the parties to serve as sole arbitrator, the matter was heard on 14 July 1982, in Washington, D. C. Both parties appeared and presented evidence and argument. They were unable, however, to agree upon a statement of the issue. The Postal Service proposed the following (Tr. 7):

Are the stewards in each of the 39 cases before the Arbitrator entitled to compensation for the time spent by them away from the job in the performance of certain contract-related work as specified in each of the 39 grievances?

The Union proposed the following (Tr. 6-7):

Whether the Union waived its claims for compensation in the 39 grievances under review by entering into the July 27th, 1981 settlement agreement in Case No. H8N-5K-C-14205. If not, what shall the remedy be?

The parties agreed (Tr. 6) that the arbitrator should decide on the statement of the issue. Accordingly, he determines that the issue is as stated by the Union.

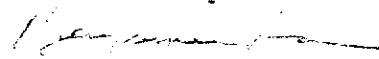
A verbatim transcript was made of the arbitration proceedings, and each party filed a post-hearing brief. Upon receipt of the briefs on 11 October 1982, the arbitrator officially closed the record.

On the basis of the entire record, the arbitrator makes the following

AWARD

The Union did not waive its claims for compensation in the 39 grievances under review by entering into the July 27th, 1981 settlement agreement in Case No. H8N-5K-C-14205.

The 39 grievances are remanded to the regional level for disposition in accordance with the grievance-arbitration procedure set forth in Article XV of the National Agreement.



Benjamin Aaron
Arbitrator

Los Angeles, California
18 January 1983

In the Matter of Arbitration

between

UNITED STATES POSTAL SERVICE

Case No. H8N-5K-14893

and

NATIONAL ASSOCIATION OF LETTER CARRIERS

OPINION

I

Article XVII [Representation], Section 2 [Appointment of Stewards] of the 1978-1981 National Agreement (JX-1) provides in part:

A. Each Union signatory to this Agreement will certify to the Employer in writing a steward or stewards and alternates in accordance with the following general guidelines. Where more than one steward is appointed, one shall be designated chief steward. The selection and appointment of stewards or chief stewards is the sole and exclusive function of each 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). The number of stewards shall be in accordance with the formula as hereafter set forth:

The Phoenix, Arizona post office has nine carrier stations where more than one Union steward is appointed. On 17 September 1980, Leo Gutierrez, S C Director, Employee and Labor Relations, in Phoenix, wrote to Stan Chronister, President of Branch 576, in part as follows (EX-2):

I am in receipt of your letter of 7-31-80 containing your stewards' designation for the Phoenix Stations and Glendale. I would like to draw your attention to Article XVII, Section 2 which requires that when there is more than one steward designated in a particular location, they will be specifically designated to cover certain sections or employees. . .

I am requesting that within the next 30 days, your organization submit a new stewards' designation, meeting the sectional breakdown requirement of Article XVII. We will, of course, continue to honor your current listing in the interim.

It is, of course, your option as to whom you designate as a steward and what method you decide to use to determine which steward will represent which employees. Our only concern is that the designations be arranged in such a way that no single employee is represented by more than one steward. . . .

Chronister declined to accede to this request, and the Phoenix post office, as of 3 November 1980 (EX-2) refused to recognize any of the stewards in multisteward stations. Various grievances were then filed to protest that refusal. One of these - - No. H8N-5K-C-14205 - - was processed quickly to Step 4 to expedite arbitration. On 1 April 1981, an Interim Settlement Agreement (JX-2) was executed by W. E. Henry, Jr., Director, Office of Grievance-Arbitration, for the Postal Service, and by Vincent R. Sombrotto, President, for the Union. The Interim Settlement Agreement provided in part:

. . .

- (3) This agreement is an interim agreement because its terms shall remain in effect only until the grievance is fully processed by the parties at Step 4, decided by an arbitrator, or fully and finally settled. . . .

- (6) While the above captioned grievance is awaiting final disposition, the parties shall process Step 1 grievances at the Phoenix Post Office in the following manner at those stations or branches where more than one NALC steward per tour has been certified to represent employees:
- (a) The NALC need not designate a precise work area or a precise group of employees over which each steward shall have jurisdiction to represent employees and process grievances on that tour in that station or branch.
 - (b) The NALC shall monitor all future Step 1 grievance filings to ensure that two or more stewards do not file or process the same grievance.
 - (c) If the same grievance has already been filed more than once and such filings remain in any step of the grievance procedure, the NALC will withdraw those filings which duplicate grievances, so that only one grievance will be processed on each grievance matter.
 - (d) Any grievances now in process which arose as a result of the parties' conflicting interpretation of Section 2A of Article XVII, in which the issue is simply failure to allow representation, shall not be processed further, but shall remain in abeyance at all steps of the grievance procedure until the above captioned grievance is finally decided or settled. Those grievances held in abeyance shall then be disposed of by the parties in conformance with the final disposition of the above captioned grievance. . . .
- (8) There are no terms and conditions of this interim settlement agreement not set forth above.

Case No. H8N-5K-C-14205 remained at Step 4, pending arbitration, until negotiations for the 1981-1984 National Agreement were nearly completed. Sombrotto then told Joseph F. Morris, Senior Assistant Postmaster General, Employee Labor Relations Group, who was the chief spokesman for the Postal

Service in the negotiations, that he would not sign the Agreement unless the Phoenix dispute over designation of stewards was satisfactorily resolved. Morris then discussed the matter with Henry, and directed him "to prepare an agreement that would resolve the problem" (EX-1). Henry did so, and a prearbitration settlement agreement (JX-2), "[i]n full and complete settlement of this grievance," was executed by Morris and Sombrotto on 27 July 1981. The first four paragraphs were, in substance, a restatement of subparagraphs (a), (b), (c), and (d) of paragraph (6) of the Interim settlement Agreement of 1 April 1981. Paragraph (5) of the prearbitration settlement agreement declared:

Upon execution of this. . . agreement, the
Interim Agreement. . . of April 1, 1981,
will become null and void.

Sombrotto testified that in none of his discussions of the Phoenix steward dispute was any reference made to claims of compensation. Indeed, he stated: "I wasn't even aware that there were any cases existing for compensation." (Tr. 25) Henry testified that he had been aware when he drafted the settlement agreement that there were cases pending in which compensation for stewards had been requested, but that the settlement was predicated on the particulars of Case No. H8N-5K-C-14205, in which no such claim had been made. He stated: "The issue of compensation was never really raised." (Tr. 45-46)

II

During a six-month period prior to execution of the Interim Settlement Agreement, when Postal Service management in Phoenix was refusing to recognize Union stewards in multisteward stations, some 39 grievances involving claims for compensation to stewards for time spent processing grievances "off the clock" were filed. Those grievances are consolidated in the Case No. H8N-5K-14893, now before me. The Union argues that the cases should be remanded to the regional level for resolution in accordance with Article XV [Grievance-Arbitration Procedure] of the Agreement. The Postal Service contends that the grievances should all be denied on the merits.

As previously indicated, I think the Union's statement of the issue is the proper one; hence, I shall express no opinion on the merits of the claims for compensation put forth in the 39 grievances. The sole question to be decided in this proceeding is whether those claims were waived by the Union as part of the prearbitration settlement agreement of 27 July 1981.

I do not think the evidence supports the Postal Service's claim that the settlement agreement disposed of the stewards' claims for compensation. It argues that renunciation of those claims was the "quid pro quo" for the concessions it made in that agreement; but both Henry and Sombrotto agree that the subject of steward compensation was never raised. If there

was any "quid pro quo" for the Postal Service's agreement that the Union "need not designate a precise group of letter carriers over which each carrier shall have jurisdiction," it was the Union's agreement to "monitor all Step 1 grievances filed by letter carriers to ensure that two or more stewards do not file or process the same grievance." It is clear from the testimony adduced at the hearing that these were the crucial matters in dispute.

I am satisfied that the question of compensation to stewards at Phoenix, who, because of management's refusal to recognize them, were forced to process their grievances "off the clock," was never raised in the negotiations of the pre-arbitration settlement agreement of 27 July 1981, and that the agreement was not mutually understood by the parties to embrace that issue. Accordingly, it is remanded to the regional level for disposition in accordance with the grievance-arbitration procedure.

Benjamin Aaron
Benjamin Aaron
Arbitrator