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C# 10167

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)
between) GRIEVANT: Class Action
UNITED STATES POSTAL SERVICE) POST OFFICE: Chattanooga, TN
and) CASE NO: S7N-3F-C 26923
NATIONAL ASSOCIATION OF LETTER)
CARRIERS, AFL-CIO)

BEFORE: Robert G. Williams, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Orvil R. Smith

For the Union: Ray Winters

Place of Hearing: 6050 Shallowford Rd.
Chattanooga, TN

Date of Hearing: August 2, 1980

AWARD:

The Grievance is hereby sustained in accordance with the opinion. The Grievants shall be entitled to recover one (1) hour per work day at time and one-half (1½) for each work day following the four (4) week time limit to November 18, 1989. This Arbitrator retains jurisdiction in the event a dispute arises regarding the implementation of this award.

Date of Award: August 6, 1990

Robert G. Williams

I. BACKGROUND

This case arose under the National Agreement effective from July 21, 1987 to November 20, 1990. In the settlement of a grievance the parties agreed on June 29, 1989 that if the applicable criteria were met a special mail count and inspection would be conducted on the Grievants' routes and any warranted adjustments would be made. The routes were not adjusted until November 18, 1989. The Grievants protested this delay, filed their standard form grievance and processed their case to this arbitration. An arbitration hearing was held on August 2, 1990 at which time the parties stipulated the undisputed facts in this case and argued their respective positions. The issues presented at the hearing were as follows:

Are the Grievants entitled to recover compensation for the additional stress of carrying overburdened routes as the result of management's delay in making route adjustments?

Are the Grievants entitled to recover punitive damages for management's delay in making route adjustments and, if so, how much?

The parties concluded their presentations with oral arguments in support of their respective positions.

II. FINDINGS

The material facts in this case were not disputed by the parties. In early 1989 the Carriers on routes 202, 203, 204 and 206 in Chattanooga, Tennessee grieved claiming their routes were out of adjustment. On June 29, 1989 their grievance was resolved in a settlement agreement which provided that "If the criteria is met as outlined in M-39, special counts will be conducted." On or about July 10, 1989 the Service notified various management personnel that their positions would be abolished effective September 23, 1989. Management officials who would have been responsible for implementing the June 29, 1989 grievance settlement were involved in these personnel changes. They neglected to have the promised criteria analysis performed as well as succeeding route inspections. The Grievants, on November 3, 1989, filed their Grievance protesting management's failure to conduct the promised route examination and make adjustments within contractual time limits. Finally, on November 18, 1989 management made the necessary route adjustments on the affected routes. During the period from June 29th to November 18th the Grievants were properly compensated for their actual hours of work on their overburdened routes. However, the additional

stress of continuing to work on overburdened routes warrants compensation at the rate of one (1) hour per work day at the overtime rate of time and one-half according to the Grievants. In the alternative they claimed this payment would deter management's repeated disregard of route examination and adjustment time limits. The Service denied the Grievants' requests for this compensation or punitive damages.

III. POSITIONS OF PARTIES

The Union contends the Service had four (4) weeks from the June 29, 1989 grievance settlement to perform routine inspections on the Grievants' routes. Management failed to conduct these inspections. Not until management made route adjustments on November 18, 1989 were the Grievants relieved of the stress of working overburdened routes. They are entitled to compensation for this extended period of stress. In the alternative, management should not be immune from responsibility for violating the contractual time limits of the Agreement. A monetary award is necessary to deter such conduct. The Grievants introduced ten (10) arbitration awards in support of its position.

The Service, on the other hand, contends the Grievants were fully compensated for their work on their overburdened routes. They were provided auxiliary assistance on many occasions.

When they had to work overtime, they were paid overtime rates and worked in accordance with the Agreement. With respect to punitive damages, the Service contended necessary personnel changes occurred, preventing officials from conducting the route inspections, counts and adjustments until November 1989. There was not intentional disregard of contractual time limits for making route changes. The requests for additional compensation or punitive damages should be denied.

IV. DISCUSSION

Article 19 of the National Agreement incorporates the M-39 by reference. Chapter 2, Mail Counts and Route Inspections, in the M-39 includes the following section:

270 Special Route Inspections

271 When Required

a-f (omitted)

g. If over any 6 consecutive week period...a route shows over 30 minutes of overtime or auxiliary assistance on each of 3 days or more in each week during this period, the regular carrier assigned to such route shall, upon request, receive a special mail count and inspection to be completed within 4 weeks of the request....

(Emphasis Added)

The parties agreed on June 29, 1989 in their grievance settlement that the Grievants were entitled to a special mail count and possible route adjustments. Management failed to comply with the four (4) week time limits for completing these inspections. The Grievants were required to carry their overburdened routes after the four (4) week period until November 18, 1989 when their routes were adjusted. This extended period produced additional stress for the Grievants.

The basic question in this case is whether the Grievants are entitled to compensatory damages for their extended stress and/or punitive damages to deter future time limit violations and punish management for their disregard of time limits in this case. Compensatory damages are intended to make a party whole for their losses. In personal injury tort cases compensatory damages are awarded for pain and suffering. Stress, of course, is a form of pain and suffering, albeit mental injury rather than physical injury. Ordinarily, contract damages arbitrarily have not included recovery for mental injuries resulting from breaches of contract. Nevertheless, mental injuries may result from another person's failure to perform a contract duty just as much as his failure to perform a tort duty. Numerous arbitrators have recognized this fact and have awarded compensatory damages for the stress caused by another's breach

of contract. This Arbitrator concurs in this view.

Punitive damages are a different matter. They ordinarily are reserved for intentional misconduct. Persons who intentionally engage in misconduct to cause mental and/or physical harm are punished by assessing punitive damages against them. For example, persons who commit the tort of intentional interference with contractual relations may be subject to punitive damages as a deterrent. Arbitrators have recognized this fact and assessed punitive damages against a party who has intentionally breached or violated an agreement. This Arbitrator concurs in this principle.

In this case the Grievants have the burden of proving their damages. The Grievants allege their extended stress existed and they accept the rate of one (1) hour per work day at overtime rates for the additional stress. Management has no evidence to contradict the Grievants. The Grievants, therefore, are entitled to compensatory damages at the accepted rate.

The Grievants are not entitled to any punitive damages. No evidence was presented to prove management intentionally disregarded contractual time limits. In fact, management explained that personnel changes resulted in the delay implementing the June 29, 1989 grievance settlement agreement. In the absence of an intentional violation no punitive damages

are recoverable.

V. AWARD

The Grievance is hereby sustained in accordance with the opinion. The Grievants shall be entitled to recover one (1) hour per work day at time and one-half (1½) for each work day following the four (4) week time limit to November 18, 1989. This Arbitrator retains jurisdiction in the event a dispute arises regarding the implementation of this award.

This the 6th day of August, 1990.

Robert G. Williams