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ARBITRATION AWARD

December 10, 1979

UNITED STATES POSTAL SERVICE
Parkersburg, West Virginia

-and-

Case Nos. AB-E-021,
AB-E-022

AMERICAN POSTAL WORKERS UNION

Subject: Payment of Stewards - Grievance Procedure

Statement of the Issue: "Is the Postal Service required to pay Union Stewards for time spent in writing appeals to Step 3 of the grievance procedure, pursuant to Article XVII, Section 4 of the 1978 National Agreement?"

Contract Provisions Involved: Article XV, Section 2, Steps 2 and 3 and Article XVII, Sections 2 and 4 of the July 21, 1978 National Agreement.

<u>Grievance Data:</u>	<u>Date</u>
Grievance Filed:	March 1979
Step 2 Meeting:	March 19, 1979
Step 3 Meeting:	April 17, 1979
Step 4 Meeting:	June 8, 1979
Case Heard:	September 6, 1979
Transcript Received:	September 19, 1979
Briefs Submitted:	Nov. 21 & 23, 1979

Statement of the Award: Steward Romine should be paid for time spent in writing appeals to Step 3 of the grievance procedure. The Postal Service's failure to pay him for such time was a violation of Article XVII, Section 4. He should be compensated for these hours.

BACKGROUND

These grievances protest the Postal Service's refusal to pay a Steward for time spent writing appeals from Step 2 to Step 3 of the grievance procedure. The Union insists the Steward is entitled to be paid for such "grievance handling" pursuant to Article XVII, Section 4 of the National Agreement. The Postal Service disagrees.

T. Romine is a Distribution Clerk in the Parkersburg, West Virginia post office. He is a Steward as well. Some time in 1979, supervision gave him a number of adverse Step 2 decisions on grievances he had processed. He chose to appeal those grievances to Step 3. He asked his supervisor to be relieved during his tour because "I have to appeal a couple of adverse Step 2 decisions." The supervisor refused to let him do this paper work "on the clock", i.e., on Postal Service time.

Romine wrote the appeals to Step 3 on his own time. He then grieved, urging that he had a right to appeal grievances from Step 2 to Step 3 during regular working hours and that he should be paid for this appeal work. His claim is based on Article XVII, Section 4 which reads in part:

"The Employer will authorize payment only under the following conditions:

"Steps 1 and 2 - The aggrieved and one Union steward...for time actually spent in grievance handling, including investigation and meetings with the Employer. The Employer will also compensate a steward for the time reasonably necessary to write a grievance. In addition, the Employer will compensate any witnesses for time required to attend a Step 2 meeting.

"Meetings called by the Employer for information exchange and other conditions designated by the Employer concerning contract application..." (Emphasis added)

A brief summary of the parties' main arguments would be useful. The Union insists that the Steward's preparation of

appeals from Step 2 to Step 3 constituted a Step 2 "grievance handling" activity and that he hence should have been paid for his appeal work under Article XVII, Section 4. The Postal Service contends that pay is due only for certain specified "grievance handling" activities and that the Steward's appeal work was not an "investigation" or a "meeting with the Employer" or the "writ[ing of] a grievance." It alleges also that his appeal work was not a Step 2 activity but rather was the initial stage of Step 3. It believes the Steward's claim should be rejected on either of these grounds.

DISCUSSION AND FINDINGS

The problem in this case arises from the ambiguity in Article XVII, Section 4. That provision, to repeat, calls for payment to Stewards for time spent in "grievance handling, including investigation and meetings with the Employer [and] ...writ[ing] a grievance."

The Postal Service treats "including" as a word of strict limitation. Its position is that "grievance handling" covers only those tasks expressly "includ[ed]" in Article XVII, Section 4 and that the Steward's appeal from Step 2 to Step 3 is not one of them. Dictionary definitions provide no answer. For the term "including" can be used in more than one way. It is not necessarily a word of strict limitation. No one would deny that the whole is the sum of its parts. When one speaks of the whole "including" certain enumerated parts, the reference could be to all the parts. But it could just as well be to some of the parts. Thus, when the parties embraced the idea of paying for "grievance handling" which "includ[ed]" certain enumerated tasks, it is not clear whether they meant to cover only those listed tasks (as the Postal Service claims) or whether they meant to cover any task which fell within the rubric of "grievance handling" (as the Union claims).

The answer to this question must be found elsewhere. There are several considerations which favor the Union's position. First, if the Postal Service were correct, the parties need only have stated in Article XVII that Stewards would be paid for time spent in "investigation and meetings with the Employer [and]...writ[ing] a grievance." There would be no need whatever for the words "grievance handling." Those

words would be mere surplusage.* However, the parties do not idly write into their Agreement words intended to have no effect. The very presence of the term "grievance handling" suggests that the parties had something more in mind than the three enumerated tasks.

Second, it is impossible to overlook the breadth of the term "grievance handling." It is much larger than any of the enumerated tasks. It encompasses "investigation", "meetings...", "writ[ing] a grievance", and more. Had the parties intended these three tasks to serve as a limit on payments to Stewards, they could easily have said so. They could have stated that payment was for time spent on the following kinds of "grievance handling" and then enumerated the three tasks. But the words they chose suggest that "grievance handling" is not circumscribed by these tasks.

Third, essentially the same issue was arbitrated under the 1971 National Agreement. There, a Steward sought pay for time spent appealing from Step 1 to Step 2A, i.e., for time spent reducing the grievance to writing. The Postal Service apparently took the same position as it does here. It urged that the Agreement called for payment for "grievance handling, including investigation and meetings with the Employer" and that writing a grievance was neither "investigation" nor a "meeting." Arbitrator Fisher held for the Union, explaining that the term "grievance handling" was broad enough to encompass writing a grievance.** He asserted, "In the absence of any contractual language stating that the actual writing of a grievance does not constitute 'handling', it is held that such activity requires payment by the Employer." Notwithstanding this broad view of "grievance handling", the parties have continued to use the very same language in their National Agreements.

* The Union position, on the other hand, creates no surplusage. For the test then would be "grievance handling" and the three enumerated tasks would be the most prominent examples of what the parties meant by "grievance handling."

** This award is dated January 1973 and is referred to in the Union's arbitration files as Case No. 389.

For these reasons, I find that the word "including" in Article XVII, Section 4 is not a term of limitation. It follows that the payment for "grievance handling" is not limited to the three enumerated tasks. Steward Romine's action in appealing cases from Step 2 to Step 3 was plainly "grievance handling." He is therefore entitled to be paid for that time provided the appeals are truly Step 2 work. That question is discussed below.

In reaching this conclusion, I have fully considered another Postal Service claim. It emphasizes the following sentence which was added to Article XVII, Section 4 in the 1973 National Agreement: "The Employer will also compensate a steward for the time reasonably necessary to write a grievance." It argues that express inclusion of this writing as a form of compensable "grievance handling" indicates that other kinds of writing (e.g., the appeal from Step 2 to Step 3) are not covered. This argument is not persuasive. The fact is that this sentence represents nothing more than the parties' adoption of Arbitrator Fisher's award. The parties also continued to use the term "grievance handling." By doing so, they appear to have adopted Arbitrator Fisher's rationale that this term was broad enough to include tasks other than those enumerated in Article XVII, Section 4.

One other crucial question must be resolved. Stewards are paid only for Step 1 and Step 2 "grievance handling." The Union maintains that preparation of the appeal from Step 2 to Step 3 is part of Step 2 and is hence covered by Article XVII, Section 4. The Postal Service says this appeal is a Step 3 activity.

Article XV, Section 2 describes the various steps of the grievance procedure. The final stage of Step 2 and the initial stage of Step 3 read as follows:

Step 2 - "(h) The Union may appeal an adverse Step 2 decision to Step 3. Any such appeal must be made within fifteen (15) days after receipt of the Employer's decision unless the parties' representatives agree to extend the time for appeal. Any appeal must include copies of (1) the standard grievance form, (2) the Employer's written Step 2 decision, and, if filed, (3) the Union corrections or additions to the Step 2 decision."

Step 3 - "(a) Any appeal from an adverse decision in Step 2 shall be in writing to the Regional Director for Employee and Labor Relations, with a copy to the Employer's Step 2 representative, and shall specify the reasons for the appeal."

These provisions offer little assistance. It is more useful to examine the Steward's function and the actual mechanics of moving a grievance from Step 2 to Step 3. The Steward meets with the Postal Service representative; he makes a detailed statement of the facts and contract clauses on which he relies; he introduces evidence if appropriate; he argues his case. This is of course the Step 2 meeting. Later, he receives the Postal Service's decision. If it is adverse, the Union may choose to appeal the grievance to Step 3. In that event, the Steward has other tasks to perform. He corrects the facts and contentions in the Step 2 decision if necessary; he puts together the required documents; and he writes out the reasons for the appeal. It seems to me that this is also a Step 2 activity. For not until the appeal is perfected, not until these papers are filed with the Postal Service Regional Director, does the dispute actually reach Step 3. Anything which precedes that filing is a Step 2 activity. This view is, I think, consistent with the language of the grievance procedure itself.

Thus, Steward Romine's appeals from Step 2 to Step 3 involved Step 2 "grievance handling" and the time he spent on this paper work was compensable under Article XVII, Section 4.

There is one final Postal Service claim which deserves brief mention. It points to a Union proposal in the 1978 contract negotiations which would have extended Article XVII, Section 4 to all steps of the grievance procedure and would have required payment of Stewards for time spent in "grievance handling, including investigation, writing the grievance, and all meetings with the Employer including arbitration hearings." It notes the proposal was rejected. And it alleges that the terms of the proposal demonstrate that the Union itself "did not believe that any activities beyond those specifically listed in Article XVII were reimbursable..." In my opinion, it demonstrates no such thing. The main thrust of the above proposal was to have Stewards paid by the Postal Service whenever they met with Management no matter what step of the grievance procedure was involved. That has nothing to do with the issue before me in this case.

AWARD

Steward Romine should be paid for time spent in writing appeals to Step 3 of the grievance procedure. The Postal Service's failure to pay him for such time was a violation of Article XVII, Section 4. He should be compensated for these hours.



Richard Mittenthal
Richard Mittenthal, Arbitrator