

C #10516

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-CIO

GRIEVANT: Class Action
POST OFFICE: Memphis, TN
CASE NO. S7N-3C-C 29186

BEFORE: Robert G. Williams, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Carolyn Shirkey

For the Union: George Cooper

Place of Hearing: Memphis, TN

Date of Hearing: November 20, 1990

AWARD:

The Grievance in Case No. S7N-3C-C 29186 is hereby sustained in accordance with the opinion. The Grievants are entitled to special route inspections on Routes 2809, 2811, 2813 and 2816 within four (4) weeks following the Postal Service Representative's promise on March 14, 1990. The Grievants for Routes 2804 and 2810 must file separate grievances to establish any claim to route inspections. This Arbitrator expresses no opinion regarding any inspections that may or may not be required prior to March 14, 1990 or any remedies for not making timely

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route adjustments. Those matters are for the Arbitrators hearing the cases on each separate route. This Arbitrator retains jurisdiction in the event any dispute arises regarding the implementation of this award.

Date of Award:

December 28, 1990

Robert M. Williams

This case arose under the National Agreement effective from July 21, 1987 until November 20, 1990. On or about March 14, 1990 in a Step 2 grievance appeal, the Postal Service's Representative denied grievances requesting special route inspections for four (4) routes (2809, 2811, 2813 and 2816). Although the grievances were denied, the same Representative stated the routes would be checked within 4 weeks. When the Postal Service did not check the routes within this time period, the present grievance was filed on May 8, 1990 and properly processed to this arbitration under the Agreement. An arbitration hearing was held on November 20, 1990 at which time the parties introduced their evidence, examined all witnesses and argued their respective positions. The issues presented at the hearing were as follows:

- 1) Does this Arbitrator have the authority to decide whether the Postal Service obligated itself during the processing of their prior grievances to conduct route counts for the Grievants and, if so;
- 2) Did the Postal Service obligate itself to conduct route counts for the Grievants and, if so, what shall be the remedy?

Following the oral arguments of the parties, the hearing was declared closed.

II. FINDINGS

The essential factual circumstances are not disputed in this case. On September 29, 1989 Grievant Williams filed his Standard Form Grievance requesting a special route inspection on Route 2809. On October 2, 1989 Grievant Vaughn filed his Standard Form Grievance requesting a special route inspection on Route 2816. The same request was made for Route 2813 on October 2, 1989 by Grievant Cline and for Route 2811 on October 6, 1989 by Grievant Nelson. All of these Grievants processed their cases to Step 2 where they were heard by the same Postal Service Representative. He denied each of the grievances and provided each Grievant with a written Step 2 answer dated March 14, 1990. He then stated at the end of each letter:

Although the grievance is denied for the reason stated above, the grievant's route will be checked within 4 weeks.

When the Postal Service failed to conduct these inspections within four (4) weeks, the Grievants filed this class action grievance on May 8, 1990. In this class action the Union contended the four (4) original routes plus routes 2804 and 2820 would be inspected. The actual inspections began

on April 30, 1990. The issue of delay and obligation to conduct these route inspections was presented to Arbitrator Dunn in one of the prior grievances.

III. POSITIONS OF PARTIES

The Union contends the four (4) original routes plus the two additional routes must be inspected under this class action grievance. The Postal Service promised each of the original as well as the two additional Grievants that their routes would be inspected within four (4) weeks. Once promised, the Union had the right to enforce this commitment via a separate class action grievance.

The Postal Service contends this Arbitrator has no jurisdiction to hear these cases. The alleged promise was made during the processing of separate grievances. Under the Agreement each Grievant was processing his or her case separately. Any interpretation of the Postal Services Step 2 answer is a matter for each arbitrator hearing those cases. This Arbitrator is without authority to hear this case. Even if he had the authority, the statement relied upon was part of a decision denying the Grievances requesting route inspections. The Grievants did not accept any settlements. The Postal Service, therefore, is not required to do

anything until the individual grievances are resolved. Both parties submitted several arbitration awards in support of their respective positions. These were reviewed by this Arbitrator.

IV. DISCUSSION

This case is unusual because the Postal Service's Representative denied the individual grievances requesting special inspections, but agreed in his decision letter to provide the requested remedy. He denied the remedy with his left hand and granted it with his right. Perhaps the Representative was attempting to lead Union Representatives to believe that further processing of the grievances was unnecessary because the requested remedy was granted. When time limits had passed, the Representative could contend the Grievance was denied so no remedy was enforceable. Perhaps, he was just making an unnecessary and confusing accommodation. Such guile or ineptness has no place in labor relations representation. In any event, the same words were used in response to the original grievances. No prior grievances existed for Routes 2804 and 2820. The Representative's language, therefore, is only applicable to the original four (4) Grievances in which it was used.

The threshold issue is whether this Arbitrator has jurisdiction to hear this case. No doubt the language relied upon was not present when the four (4) original Grievances were filed in September and October of 1989. Only later did the parties encounter and realize the significance of the language used by the Postal Service's Representative in his Step 2 answer. Article 15.2 of the Agreement provides that:

Section 2. Grievance Procedure-Steps

Step 1:

(a) Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause....

(Emphasis Added)

When the original Grievants individually received the standard form response from the Postal Service Representative, they had grounds for a class action grievance. The language was the same in each letter. The Grievants were entitled to a uniform interpretation of what the Representative said. The same language should not produce inconsistent results for these Grievants. Therefore, they were entitled to file

a class action grievance to obtain this uniform interpretation giving this Arbitrator the authority to render a uniform interpretation of the same language.

The Postal Service Representative's document is ambiguous. It purports to be a denial of a grievance, yet it includes a sentence that expresses a contrary intent. It shows he was granting the requested remedy as an accommodation or as a artifice. In any event, he denied the individual grievances, but promised to have the routes checked within four weeks. There is no evidence that the term "checked" was not synonymous with "inspected." The Grievants, therefore, are entitled to have their routes checked. Since the parties processed this class action issue to this Arbitrator, this interpretation controls over the views of separate arbitrators selected to decide the original grievances protesting separate routes since September and October of 1989 and requesting remedies for the entire period the routes may have been out of adjustment. Only the interpretation of the Postal Service Representative's language in his standard form document is decided by this case.

V. AWARD

The Grievance in Case No. S7N-3C-C 29186 is hereby

sustained in accordance with the opinion. The Grievants are entitled to special route inspections on Routes 2809, 2811, 2813 and 2816 within four (4) weeks following the Postal Service Representative's promise on March 14, 1990. The Grievants for Routes 2804 and 2820 must file separate grievances to establish any claim to route inspections. This Arbitrator expresses no opinion regarding any inspections that may or may not be required prior to March 14, 1990 or any remedies for not making timely route adjustments. Those matters are for the Arbitrators hearing the cases on each separate route. This Arbitrator retains jurisdiction in the event any dispute arises regarding the implementation of this award.

Robert G. Williams

Robert G. Williams, Arbitrator