

11,973 (HIC-2D-C) Zumas
National Award Sustained 10/4/85
Art. 16,19 USPS #814169

C - 20992

In the Matter of Arbitration Between)
UNITED STATES POSTAL SERVICE)
And)
AMERICAN POSTAL WORKERS UNION, AFL-CIO)

OPINION AND AWARD

Nicholas H. Zumas, Arbitrator
Class Action Grievance
Number: HIC-2D-C 11973

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Background

Arbitration Division
Labor Relations Department

This is a Step 4 appeal to National Level Arbitration pursuant to the provisions of Article 15 of the National Agreement between United States Postal Service (hereinafter "Service") and American Postal Workers Union, AFL-CIO (hereinafter "Union"). Hearing was held in Washington, D.C. on December 5, 1984, at which time testimony was taken, exhibits offered and made part of the record and argument was heard. Post-hearing briefs were received on February 6, 1985.

Appearances

For the Service: John S. Ingram

For the Union: Jim Lingberg

Statement of the Case

This dispute arose at the Northern Virginia MSC at Merrifield, Virginia. Initially, the grievance charged that the Service violated the National Agree-

ment by maintaining more than one active separate and independent disciplinary file, and that Acting Supervisors (204-B) improperly had access to confidential information contained in these disciplinary files contrary to the National Agreement and the Privacy Act.

Subsequently, the Union, in its post-hearing brief, stated: "We no longer contend that there is an absolute bar against maintenance of more than one control personnel file in an installation", as long as the files were adequately secure.

Because the Union felt that the grievance involved an interpretative issue relating to provisions of the National Agreement, the dispute was submitted to impartial arbitration at the National Level pursuant to Article 15, Section 4 (B).

Issue

The parties have stipulated that the question to be resolved is whether a Temporary Supervisor (204-B) is entitled to have access to the Supervisor's Level 2 personnel records.

Statement of Facts

Because of certain alleged disclosures of the contents of employees'

disciplinary records by Temporary Supervisors after having returned to the regular workforce, the Union at the Northern Virginia MSC filed a class action grievance contending that Temporary Supervisors were improperly being given access to Level 2 - Supervisors Personnel Records in violation of the confidentiality requirements of the Privacy Act.

Position of the Union

The Union contends that 204-B Supervisors should not have access to Level 2 - Supervisors Personnel Records, because they are not bound as are permanent Supervisors, to comply with the confidentiality requirements of the Privacy Act; and that such confidential information has been, in the past, divulged by 204-B Supervisors after they have returned to the bargaining unit. While the Union recognizes that 204-B Supervisors may request, issue and record disciplinary actions against bargaining unit employees, they should not be allowed access to those files which, essentially, contain an employee's prior disciplinary record.

In its post-hearing brief, the Union states:

"First, Temporary Supervisors, will in all likelihood, return to the bargaining unit, where they will be in the exact same status and possibly working side-by-side with the same employees whose confidential files they were privy to. Second, it is not clear in the contract or handbooks whether employees who return to the bargaining unit after learning personal information while 204-B's are subject to the same obligations of confidentiality as permanent Supervisors or to what extent such obligations are enforceable. In

short, once a Temporary Supervisor is given confidential personal data from an employee's file, the employee has little protection against release of that information into the bargaining unit or among other people without any need or right to know".

Restricting a 204-B Supervisor's access to an employee's prior disciplinary record, the Union argues, furthers the policy goal of preventing "substantial harm, embarrassment, inconvenience or unfairness" to such employee as set forth in Part 314.13 of the Employee & Labor Relations Manual, consistent with the requirements of the Privacy Act. The Union points out that under Part 314.532 of the E&LR Manual, a Level 2-Supervisor's Personnel Records come under the Privacy Act security requirements with "access restricted to those with the need to know".

By way of remedy, the Union proposes that 204-B Supervisors should be barred from direct access to an employee's personnel file in those installations where there are permanent supervisors available for consultation. This, the Union argues, is consistent with the policy goal expressed by the parties of trying to prevent substantial harm, embarrassment, inconvenience or unfairness that an unauthorized disclosure would cause.

Position of the Service

The Service contends that a 204-B Supervisor has the right to review a Level 2-Supervisor's Personnel Record; and this right may be exercised on a

"need to know" basis.

If, for example, a 204-B Supervisor disciplines an employee, such Supervisor needs and is therefore allowed, to examine that employee's personnel record in order to ascertain what disciplinary action is appropriate.

The Service argues further that a 204-B Supervisor is a member of Management, pointing out that under Article 37, an employee loses the right to bid on a vacant clerk craft duty assignment when he or she is working as a 204-B Supervisor. As such, such 204-B Supervisor is performing an exclusively managerial function, and should have the right to review Level 2 - Supervisor's Personnel Records.

The Service points out that Section 621.661 of the Personnel Operations Handbook provides that Postal Officials and Personnel Office employees who require information in performance of Postal duties may be given access to Official Personnel Folders. The Service also notes that Part 313.56 of the Employee & Labor Relations Manual states: "Personnel information required in the performance of Postal duties may be given to any Postal employee". The Service also relies on the provisions of Article 16, Section 8 giving Supervisors, including 204-B Supervisors, the right to impose suspension or discharge after review and concurrence by higher authority. If the Union's proposed remedy was

accepted, a review procedure for 204-B Supervisors would have to be established; a procedure never contemplated by the parties.

Findings and Conclusions

After review of the record, this Arbitrator finds that a 204-B Supervisor is entitled to review Level 2-Supervisor's Personnel Records only in circumstances where there is a "need to know", and not otherwise. This is to say that in installations and in circumstances where a permanent Supervisor is available, a 204-B Supervisor shall not have access to such files. In installations and in circumstances where a permanent supervisor is not available, a 204-B Supervisor shall be allowed access to such files in order to carry out managerial assignments.

While it is not disputed that an employee, acting in a 204-B supervisory capacity, is performing a managerial function, such employee is, in the words of Arbitrator Mittenthal, in an "essentially hybrid status".*/

*/ Case Number A8-W-939.

Such employee is part of Management supervision but also retains certain rights under the National Agreement. Such an employee may occupy such temporary supervisory position for as briefly as a day or as long as several weeks or months.

There is no disagreement that a 204-B Supervisor has the right to perform any managerial action assigned, including the recommendation that discipline be imposed. The critical question, however, is whether such 204-B Supervisor is entitled, in all instances, to examine the Level 2-Supervisor's Personnel Records, essentially an employee's disciplinary record, before making such recommendation.

The answer to this question must take into account the function of a 204-B Supervisor, his temporary status, his "need to know", adherence to the Privacy Act, and the necessity of establishing procedures for maintaining secure and confidential records.

As noted earlier, a 204-B Supervisor has the right and obligation to perform any managerial work assigned, including the right to recommend disciplinary action. However, it is also clear that such status is temporary; and such employee will, in most cases, return to the bargaining unit. There is nothing in the Agreement or the Service's handbooks, manuals or other

regulations presented in this record that prevent such employee from disclosing protected information about another employee learned during the time spent as a 204-B Supervisor. Protection against such possible disclosure must be an overriding consideration.

In both the Personnel Operations Handbook and the Employee & Labor Relations Manual, there is expressed a strong concern that the personnel records remain secure and confidential.

Part 314.532 of the Employee & Labor Relations Manual states that, "Supervisors Personnel files are a recognized system under the Privacy Act, and are therefore subject to all its provisions". That same section provides that a Supervisor's Personnel Record is entitled to the same level of security as Official Personnel Folders.

The purpose of the Privacy Act of 1974 (5USC522(a)) is:

"[t]o provide certain safeguards for an individual against an invasion of his personal privacy by requiring Federal Agencies, except as otherwise provided by law, ...to permit an individual to prevent records pertaining to him obtained by such agencies for a particular purpose from being used or made available for another purpose without his consent".

Moreover, both Part 314.13 of the Employee & Labor Relations Manual and Part 621.61 of the Personnel Operations Handbook expressed the concern that if

the records of an employee are disclosed, it may cause "substantial harm, embarrassment, inconvenience or unfairness to the employee".

Therefore, in light of this policy that it is essential to establish procedures to ensure that security and privacy of records are maintained, a 204-B Supervisor should not be permitted, unless circumstances as outlined above warrant, to examine Level 2-Supervisor's Personnel Records as a means of preventing such information being divulged when the 204-B Supervisor returns to the bargaining unit.

Under such procedure, a 204-B Supervisor still is able to carry out his managerial function by recommending that an employee be disciplined. Such recommendation is made to a permanent Supervisor (who is obligated to keep the Personnel File information confidential). He or she would examine the Level 2 - Supervisor's Personnel Record in order to determine what discipline should be imposed. Thus, the policy goal of ensuring the confidentiality of records is met, and the 204-B Supervisor retains his authority to recommend discipline when necessary.

Such procedures do not in any way depart from the parties' agreed-upon procedures set forth in Article 16, Section 8 of the National Agreement which reads:

"In no case may a Supervisor impose suspension or discharge an employee unless the proposed disciplinary action by the Supervisor has first been reviewed and concurred in by the Installation Head or designee".

'In Associate Post Offices of twenty (20) or less employees, or where there is no higher level Supervisor than the Supervisor who proposes to initiate suspension or discharge, the proposed disciplinary action shall first be reviewed and concurred in by a higher authority outside such installation or Post Office before any proposed disciplinary action is taken". (Underscoring added).

Contrary to the assertion of the Service, this would not necessitate an additional review procedure for 204-B Supervisors. It is entirely consistent with the Agreement between the parties that before any disciplinary action in the form of suspension or discharge is imposed, such recommendation, made by either a permanent Supervisor or 204-B Supervisor, receive review and concurrence. These procedures merely limit the right of a 204-B Supervisor access to the Level 2 - Supervisor's Personnel Records unless there is a "need to know" brought about by circumstances outlined above.

AWARD

Grievance sustained. A 204-B Supervisor is entitled to review Level 2 - Supervisor's Personnel Records only in circumstances where there is a "need to know".


Nicholas H. Zumas, Arbitrator

DATE: October 4, 1985

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