

REGULAR ARBITRATION PANEL

C# 10696

In the Matter of Arbitration
Between

UNITED STATES POSTAL SERVICE

and

AMERICAN POSTAL WORKERS UNION,
AFL-CIO

OPINION AND AWARD

Nicholas H. Zumas, Arbitrator

Grievant: L. York

Case No.: E7C-2D-C 10878

Appearances:

For U.S. Postal Service: Jonathan Lister

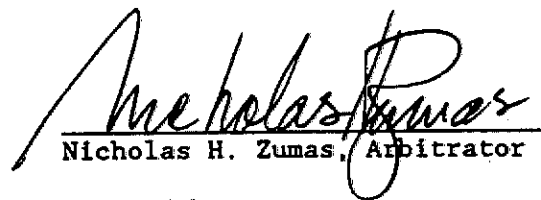
For Union: Tommy Harper

Place of Hearing: Baltimore, Maryland

Date of Hearing: May 15, 1990

Award: Grievance sustained. The Letter of Demand for health
benefits premiums is improper under the circumstances.

Date of Award: July 16, 1990


Nicholas H. Zumas, Arbitrator

STATEMENT OF THE CASE

This is an arbitration proceeding 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"). At the hearing, testimony was taken, exhibits were offered and made part of the record and oral argument was heard.

Grievant was issued a Letter of Demand for reimbursement of health insurance premiums during a period covering Grievant's termination period. The Union, on behalf of Grievant, contends that the Letter of Demand was improper, arguing that he had received no health insurance benefits because the Service terminated his health benefits plan during the period of his removal. The Service contends that Grievant is liable since Grievant would have been reimbursed for any health costs incurred during the period of his removal.

The parties, having failed to resolve the matter during the various Steps of the grievance procedure, referred the dispute to this Arbitrator for resolution.

ISSUE

The parties have stipulated that the question to be resolved is whether the Letter of Demand was proper under the circumstances; and if not, what should the remedy be.

STATEMENT OF FACTS

In 1980, Grievant was removed from employment. He appealed to the Merit Systems Protection Board (MSPB) which affirmed the removal. Subsequently, Grievant filed an appeal in federal court seeking to overturn the adverse action. In July 1986, the court suit was settled. As part of the settlement, Grievant received back pay, Annual Leave and Sick Leave that he would have accrued.

On May 12, 1988, Grievant was issued a Letter of Demand in the amount of \$2,027.11 representing health insurance premiums pursuant to the Blue Cross/Blue Shield Health Benefit Plan 101 representing the Service's obligation for coverage during the period of his removal.

Ronald Bailey, Accounting Specialist Senior, testified that he was familiar with the Grievant's case. He testified that Grievant, under the settlement agreement, was to be made whole, including back pay, Annual Leave, Sick Leave accrual as well as a deduction for taxes and retirement. According to Bailey, once Grievant is returned, the Service pays its share of the premiums that were due during the removal period. It was Bailey's assertion that Grievant would have been reimbursed for any health costs incurred during the period of removal.

When asked for evidence of payment by the Service of the premiums for the period in question, Bailey replied, "We don't have it, it's not in the record."

FINDINGS AND CONCLUSIONS

After review of the record and the testimony, it is this Arbitrator's finding that the issuance of the Letter of Demand under the circumstances was improper, and that this grievance must be sustained.

The basic premise on which the Service's contention is based is that when the settlement agreement rendered the termination void, it was as though Grievant had never been removed. In legal parlance, it is known as status quo ante. As such, not only were his benefits restored, but his obligations for which Grievant would have been responsible were reinstituted as well. Thus, the Service argues that if Grievant, after reinstatement, had incurred medical expenses during the period of removal, the insurance carrier would have reimbursed him.

Assuming, for the purposes of argument, that the Service is correct in its contention, there is simply no evidence in this case that the Service paid Blue Cross/Blue Shield its allegedly obligated portion of the health insurance premiums during the removal period. Moreover, there is no evidence in this record that the insurance carrier would have honored any medical expense incurred by Grievant during the period that he was no longer considered an employee of the Service.

In Case No. E4T-2D-C 47559, on a related issue, Arbitrator Howard stated:

"The Union is quite correct that the Service should not be able to make a claim upon an employee unless the Service can demonstrate a loss. Barring evidence that the Service remitted premium payments...on behalf of the Grievant the Service would simply receive a windfall."

On the basis of the foregoing, the Service has simply failed to substantiate its right to reimbursement by any substantive evidence of probative value. This grievance, therefore, must be sustained.