

C# 03941

IN ARBITRATION PROCEEDINGS PURSUANT TO THE -COLLECTIVE
BARGAINING AGREEMENT BETWEEN THE PARTIES

9361

W1N-5K-C-~~14393~~
Class Action
Phoenix, AZ

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In the Matter of an Arbitration)
)
between)
)
NATIONAL ASSOCIATION OF LETTER)
CARRIERS, AFL-CIO,)
)
Complainant,)
)
and)
)
UNITED STATES POSTAL SERVICE,)
)
Respondent.)
)
Involving the grievance of:)
Class Action - Branch 576 of NALC)
Glendale, Arizona)
Case No. W1N-5K-C-14393)

APPEARANCES:

ON BEHALF OF THE UNION:

MR. AL SANT
Regional Administrative Assistant
National Association of Letter Carriers
3 Innwood Circle, Suite 201
Little Rock, Arkansas 72211

ON BEHALF OF THE UNITED STATES POSTAL SERVICE:

MR. GORDON P. DEAPEN
Manager, Labor Relations
United States Postal Service
1441 E. Buckeye Road
Phoenix, Arizona 85026

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Francis Richard Walsh, Esq.
Arbitrator
200 McAllister Street
San Francisco, California 94102-4978

OPINION

The hearing in this arbitration was held in Glendale, Arizona, on November 15, 1983. The Union had filed a grievance, entitled a class action, contending there had been an unequal distribution of overtime. The case proceeded through the steps of the grievance procedure, and after the denial of the grievance at Step 3 the case was set for arbitration. The period in question was for the third quarter of 1982. Management contended in its written responses to the Union that the grievance was untimely; in oral discussion it also said that the substance of the grievance was not meritorious.

At the hearing I heard evidence on the timeliness question. At the request of the parties I issued a bench decision in which I held that the Service by its actions had waived the right to contend the grievance had not been filed in a timely manner as required by the Agreement. I announced to the parties that I would issue a written opinion giving my reasons for this decision. The Union then moved for a summary judgment, contending that the Service could not contest the merits of the case. The reason advanced by the Union in support of its motion was that management had consistently raised only the question of timeliness. I heard evidence on this question; and I decided management could introduce evidence in support of its contention that the grievance should be denied on the merits.

The parties thereafter outside my presence discussed the grievance. They informed me they had agreed to remand the grievance to Step 3.

Since no evidence was introduced on the merits of the grievance, and because I was not a party to the discussions on the merits, I express no opinion, nor do I make any finding on the merits. The purpose of this Opinion is to set forth what transpired, and to explain to the parties the basis of my decision on the timeliness question.

The Service contended the issues were:

(1) Whether or not the Service violated Article 8, Section 5, C., 2.b in the management administration of the overtime desired list for the third quarter of 1982?

(2) Whether or not the Union filed the grievance in accordance with the time limitation in the Agreement, Article 15, Section 2, Step 1 (a)?

Article 15, Section 2, Step 1 (a) provides:

"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.

The employee, if he or she so desires, may be accompanied and represented by the employee's steward or a Union representative. The Union also may initiate a grievance at Step 1 within 14 days of the date the Union first became aware of (or reasonably should have become aware of) the facts giving rise to the grievance.

In such case the participation of an individual grievant is not required. A Step 1 Union grievance may involve a complaint affecting more than one employee in the office." . . .

The Union contended the only issue was:

Whether or not the overtime desired list for the third quarter of 1982 (July 1 through September 30, 1982) was properly maintained at the Glendale, Arizona facility? If the list was not maintained correctly, and this resulted in an inequitable distribution of overtime during this quarter, what should be the appropriate remedy?

With respect to the timeliness question, the Service contends the evidence shows that: the Union did not file the grievance within the fourteen (14) days as required by the applicable section of the Agreement; under this section an individual employee or the Union may file the Step 1 grievance; the time began to run at least on September 30, 1982 when the lists for the quarter had been posted; the grievance was not filed until October 26, 1982; the Service through its representatives did not do anything to cause the time to be tolled; when the grievance was finally filed the Service informed the Union immediately that the grievance was untimely; thereafter the Service continued to inform the Union that the grievance had been filed too late.

The Union contends the evidence shows that: the Union attempted to file the grievance on October 12, 1982, a date well within the time limits of the Agreement; management prevented the Union from doing so,

by failing to provide the Union representative with the information that had been requested; at this time management was well aware that the Union was attempting to file a grievance, and it knew that the Union was entitled to the requested information; good labor-management relations require that supervision should comply with reasonable requests for information; there are many instances where, if the information sought is provided, it does not become necessary to file a grievance, and the matter can be settled amicably; both before and after October 12, 1982 the Union continued to ask for the desired information; during part of this relevant time the Union member who was attempting to process a grievance, or to file one, was denied the right by supervision to consult with his steward; the request to see the steward was not granted until some time between October 16, 1982 and October 18, 1982.

In the course of this Opinion I have not summarized all the evidence, nor have I discussed all the contentions of the parties. That which is not mentioned herein is either cumulative or not determinative.


I agree with the version of the evidence and the contentions of the Union as set forth above. There is no need to repeat them in detail here. It was obvious to supervision that the Union wanted information, and that there was good possibility that a grievance might be filed. Management refused to give the information, and it also refused to allow the Union member to consult with his steward. The combination of these two acts by the supervisor caused management to be placed in a position where it could not later claim the Union had not met

the time limitations of the Agreement. I hold the Service by its actions waived the time limitations of the Agreement.

AWARD

1. I hold the grievance was filed in a timely manner.

November 21, 1983


Francis Richard Walsh
Arbitrator