

28238

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration) GRIEVANT: Holly Dupont
Between) POST OFFICE: Pawtucket, RI
UNITED STATES POSTAL SERVICE)
)
and) CASE Numbers:
NATIONAL ASSOCIATION OF LETTER) USPS: B06N-4B-C 08359883
CARRIERS, AFL-CIO) NALC: HOLPAY61
) DRT 14-117031
)

BEFORE: Sherrie Rose Talmadge, Esq., ARBITRATOR

APPEARANCES:

For the U.S. Postal Service:
For the Union:

Donna M. Pratt, Labor Relations Specialist
Patricia A. Joseph, Local BA Region 14

Place of Hearing: 24 Corliss Street, Providence, RI
Date of Contract: 2006-2011
Relevant Contract Provisions: Article 28
Date(s) of Hearing: March 16, 2009
Date of Award: May 29, 2009

AWARD SUMMARY

Management violated Article 28 of the National Agreement, when on September 23, 2008 the Grievant was issued a Letter of Demand for an alleged payroll overpayment of \$5,335.81, by failing to provide adequate rationale for the indebtedness in light of the Service's earlier affirmation that the Grievant had not been incorrectly placed at various pay steps between December 2006 and May 2007. Accordingly, the grievance is sustained.

The Letter of Demand issued to the Grievant is to be rescinded. Nonetheless, the Grievant is to remain on the corrected pay step.


Sherrie Rose Talmadge, Arbitrator

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John J. Casciano, NBA
NALC-New England Region

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VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS

STIPULATED ISSUE

1. Did Management violate Article 28 of the National Agreement when on September 23, 2008 the Grievant was issued a Letter of Demand for an alleged payroll overpayment of \$5,335.81?
2. If so, what is the appropriate remedy?

RELEVANT CONTRACTUAL PROVISIONS

Article 28

The parties agree that continued public confidence in the Postal Service requires the proper care and handling of the USPS property, postal funds and the mails. In advance of any money demand upon an employee for any reason, the employee must be informed in writing and the demand must include the reasons therefore.

Employer Claims. An employer claim is a demand made by management that a letter carrier pay for certain types of losses or damage, to the mail or to other postal property. This paragraph requires the employer to inform an employee in writing in advance of the reasons for any money demand. (JCAM; p. 28-1)

FINDINGS OF FACT¹

On July 8, 2006, Letter Carrier Holly Dupont, the Grievant, was converted to full time and placed in a higher level position (Level 2 Step A position) at the Darlington Station. On February 17, 2007, the Grievant bid to a lower level assignment which placed her into a Level 1 Step D position. During May 2007, the Grievant informed the Branch Vice President Palladini that she may have been placed on an inaccurate pay status and was being overpaid. Palladini contacted Michelle Palardy, Human Resource Generalist-Principal from the Personnel Office in Providence, RI. After Palladini explained that the Service may be overpaying the Grievant, Palardy agreed to look into it. By email dated May 10, 2007, Palardy wrote John Rogers, Postal Service Financial Control and Support Analyst, the following concerning Dupont:

The new voluntary change to lower level rules have been applied to her. This came into effect June 2006. An employee's voluntary change to lower level (including the bidding process) requires that the current higher level salary be slotted into the lower level grade. These actions will normally result in a salary promotion and may also result in a change in the next step date, depending on the dollar amount. More information on this is available on the Comp Update 2006-04 and 2006-05.

She is not being overpaid.

¹ At the hearing the parties had an opportunity to question their witnesses on direct and cross-examination, and to present material, relevant documentary evidence. At the conclusion of the hearing the parties presented closing arguments.

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At the same time, Palardy mailed a copy of this email to Branch Vice President Palladini. After receiving assurances that she was not being overpaid, the Grievant purchased her first house.

Palardy testified that during May 2007 the Postal Service moved these personnel functions to a Shared Services Center. She noted that the Grievant's salary review must have flagged errors in her report. Palardy noted that Shared Services does not notify her if there are any corrections to be made. Shared Services did a salary review and notified payroll that there was an overpayment, and payroll issued an invoice. Palardy never had a discussion with the Grievant.

On or about September 3, 2008, Manager Sandi Tierney handed the Grievant an invoice from Gary Laurant, USPS Disbursing Officer, for overpayment of \$5,335.81 that stated, "To collect for salary overpayment for PP 26/06 thru 12/08 per form 50 processed on 12/09/2006. Additional information concerning relevant salary rates and level/steps may be obtained by reviewing the payroll journal for PP 18/08 available through your local TACS coordinator." There were no additional documents supplied with the invoice. Upon receipt of the invoice, the Grievant contacted Union President James Langlois to request he look into the matter.

By letter dated September 23, 2008, Postmaster McKay-Fazzina sent the Grievant a Letter of Demand that stated in part:

Reference is made to the PS Form 1903-DZ, USPS Invoice you received, which indicates that you are indebted to the United States Postal Service in the amount of \$5,335.81 for the following reason:

Payroll related debt for overpayment from PP 26-06 through 12-08 for Form 50 processed.

The Union timely grieved the Letter of Demand. On October 14, 2008, the Step B Team remanded the issue back to the local parties to provide Management the opportunity to "inform the Grievant, in a manner that a reasonable person would understand, as to how the amount of money the Grievant owed was determined."

On November 6, 2008 the Postmaster and John Rogers met with the Grievant and Branch President Langlois to explain how the debt was determined. At the meeting the Postmaster shared the following email from HR Generalist Palardy:

I reviewed the history on Holly Dupont. Here's the brief scoop on it:

On 7/8/06 – she was converted to FT and placed into a level 2 step A position with an incorrect next step date of 12/9/06. On 6/19/08 this action was corrected to show a next step date of 5/10/08.

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On 12/9/06 – she received the incorrect step increase to level 2 B. This action was cancelled on 6/19/08.

On 2/17/07 – she bid a lower level position, placing her at a level 1 D with an incorrect step date of 12/8/07. This was corrected on 6/19/08 showing placement into level 1 B with a next step date of 12/20/08. Per ELM 422.125 reduction in grades regulations, her placement into a lower level position based on the level 2 salary actually resulted in her earning more money and requiring a new step waiting period.

On 12/8/07 – she received the incorrect step increase to level 1E. This action was cancelled on 6/19/08.

With all the corrections, she is currently at level 1 step B with a next step increase due on 12/20/08.

Errors were found by the shared services office and corrected by them.

I am sending you hard copies of everything I have. She has been overpaid since 12/9/06 through 6/19/08, when the corrections were completed. She is also entitled to a pay anomaly quarterly lump sum of \$324.00 (if the calculator is still correct). It appears she will only receive one lump sum. The reason for this is: had she remained in a level 1 position, she would have received step B 5 pay periods earlier.

At the November 6 meeting, Rogers presented payroll records with highlighted numbers and the Grievant's PS Form 50s to explain how the overpayment and the amount of debt were determined. Rogers explained that the "net pay" overpayment received by the Grievant totaled \$5,335.81, the amount requested in the Letter of Demand. The Grievant testified that she told Rogers that she did not understand where the numbers had come from. Langlois testified that the payroll history journal was undecipherable, and after the meeting he still did not understand the basis for the LOD. Langlois testified that he told Rogers and the Postmaster at the meeting that he could not understand what Rogers was telling him. Rogers testified that based on the payroll journals, he explained to the best of his abilities what had occurred.

The Grievant testified that she did not know why she owed the money, and that it was stressful because it was a lot to owe, in addition to the mortgage she had taken out, and her college loans. The Grievant testified that she was not offered an opportunity to meet with Palardy to have her further explain the payroll journals.

POSITIONS OF THE PARTIES

UNION POSITION

Management violated Article 28 of the National Agreement when they issued a letter of demand on September 23, 2008 to the Grievant for an alleged payroll

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overpayment of \$5,335.81. Neither the Grievant nor the Union President has a clear understanding of why the money is owed to the Postal Service. Moreover, there was a glaring absence of any written understanding of the Service's reasons for its claim prior to the LOD received by the Grievant. Palladini and Langlois testified that Rogers, designated by the Service to explain the overpayment, as directed by the B-Team, is the same individual who, one year prior, was involved in an inquiry initiated by the Grievant when she thought the Service was paying her incorrectly. In 2007 the Service assured the Grievant that they were paying her properly. One year later Rogers informed the Grievant that she was being overpaid and the very time period pointed out by Dupont over a year ago correlates to the time period the Service is now claiming was in error.

The language of Article 28 provides that the Grievant was entitled to an explanation she could understand, not just highlighted payroll journals. Even after Rogers met with the Grievant neither she nor the Union President understood why the money was owed to the Service, and they relayed their uncertainty to Rogers at the November 6, 2008 meeting. Despite Management's attempt to explain their position at the hearing, this does not satisfy Article 28. The Grievant has contractual rights and any explanation at the hearing did not satisfy their obligation. Management did not meet their burden.

The Grievant made financial decisions based on the information provided by the Service in 2007, and she trusted that they were providing the correct information. Once the Service decided to reverse their position, the Grievant was entitled to an explanation as to why her financial situation was being turned upside down, and she never received one that she could understand.

The Union requested that the grievance be sustained, the request of payroll debt be rescinded, and Management be instructed to ensure that the Grievant be placed in the correct step of the carrier's pay scale.

POSTAL SERVICE POSITION

Management issued the Grievant a Letter of Demand in the amount of \$5335.81 for a payroll overpayment debt to the Grievant. According to the Invoice dated September 3, 2008 from USPS Disbursing Officer in Eagan, MN, it clearly identifies the reason for the payroll debt. Management met the Article 28 requirement to provide written notice and the reasons therefore, on September 23, 2008 when a LOD was issued to the Grievant by the Postmaster. In accordance with ELM Section 462, the

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LOD must notify the employee of a Postal Service determination of the existence, nature, and amount of debt. It must also specify the options available to the employee to repay the debt or to appeal the Service's determination of the debt or the proposed repayment. The invoice from the Accounting Service Center, provided with the LOD, gave the specifics of the debt. The LOD met all of the requirements of the National Agreement. The Service also held the demand in abeyance until final disposition, as required.

At the November 6, 2008 meeting with the Postmaster, Rogers from District Finance, the Grievant and the Union President, the Grievant received an explanation of the adjustments made that established the debt. At the meeting the Postmaster explained detailed information from HR Generalist Palardy on how the debt occurred. Rogers explained in detail the payroll journals that had been provided to the Grievant on the computation of the debt. After the meeting the Grievant stated that she understood; however, since she brought the error to Management's attention, she should be absolved of the debt. Nonetheless, the Grievant did receive Unjust Enrichment from being incorrectly paid at Step B for the period as noted in the Invoice.

Palardy testified that the payroll overpayment was the result of the Grievant being coded pre-maturely and erroneously placed by the system into her next periodic Step increase prior to completing the required waiting period pursuant to Sections 421 and 422 of the ELM.

Management explained the reason for the debt to the Grievant and the Union, the debt was an honest error made by Postal management at the District Level, repayment options were explained to the employee in accordance with the Postal Procedures and Regulations. The Service is entitled to recoup their loss due to this unfortunate administrative coding error, which is an exclusion used in ELM Section 437 for a reason to waive the debt. Therefore, the LOD was issued within the terms of Article 28 and should be upheld.

DISCUSSION

At issue is whether Management violated Article 28 of the National Agreement when on September 23, 2008 the Grievant was issued a letter of demand for an alleged payroll overpayment of \$5,335.81. The Union proved by a preponderance of the evidence that the Postal Service violated Article 28.

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As noted by Arbitrator Thomas F. Levak in USPS and NALC, F98N-4F-C 00210492, NALC 16892 (2003):

Together, Article 28 and the JCAM clearly and unambiguously set forth two specific and discrete requirements, namely that: (1) before the Postal Service attempts to collect an Article 28 debt through the Letter of Demand process it must inform the employee in writing in advance of the reasons the demand will be made; and (2) the Letter of Demand itself also must include the reasons for the demand.

The Postal Service's District Accounting Office sent an invoice dated September 3, 2007 in the name of the Grievant on September 3, 2007 for overpayment of \$5,335.81 that stated, "To collect for salary overpayment for PP 26/06 thru 12/08 per form 50 processed on 12/09/2006. Additional information concerning relevant salary rates and level/steps may be obtained by reviewing the payroll journal for PP 18/08 available through your local TACS coordinator." Simply indicating that there was a salary overpayment for the period indicated did not provide the Grievant with sufficient reasons to understand the basis for the overpayment.

Article 28 also requires that the Letter of Demand include the reasons for the demand. Arbitrators have interpreted this section to require the "reasons therefor" be stated in writing to an employee when a Letter of Demand is issued, and that some "articulate and understandable explanation is required". See Arbitrator William Eaton, USPS and NALC, E90N-4E-C 97118232 (1999).

As noted by Arbitrator Guy M. Parent in USPS and NALC, Case F94N-4F-C 97111839 (1999):

A reasonable person would expect that when the Employer advises an employee that she/he has been over-paid a certain amount, some sort of explanation or calculations would be provided to substantiate the claim
*** Over-payment may be the reason for the request for reimbursement, but in this arbitrator's opinion, absent some sort of simple explanation as to how the claimant arrived at the requested reimbursement figure, the intent of the language of Article 28 has not been satisfied.

In this case, the Letter of Demand stating that the Grievant was indebted to the United States Postal Service in the amount of \$5,335.81 for "Payroll related debt for overpayment from PP 26-06 through 12-08 for Form 50 processed" did not meet the criteria for providing an articulate and understandable explanation of the reasons for the debt. The Union timely grieved the LOD.

Subsequently, on October 14, 2008, the Step B Team remanded the issue back to the local parties to provide Management the opportunity to "inform the Grievant, in a

Arbitration decision continued.

manner that a reasonable person would understand, as to how the amount of money the Grievant owed was determined."

On November 6, 2008, Postmaster McKay-Fazzina and Postal Service Financial Control and Support Analyst John Rogers, met with the Grievant and Branch President Langlois to explain how the debt was determined. Although Rogers made a good faith effort to review the payroll journals, they are difficult to follow and both Langlois and the Grievant testified that they did not understand the explanation provided by Rogers. Rogers testified that it was not his area of expertise to explain the Grievant's various Form 50s that were also provided. The Postmaster presented a memo written by Palardy, Human Resource Generalist-Principal, detailing the Service's placement of the Grievant at various incorrect step increases from December 9, 2006 forward until June 19, 2008.

However, what is critical in this case is that the Service failed to explain to the Grievant why she was now considered to have been placed on the incorrect steps in light of the May 10, 2007 written affirmation by Palardy that the Grievant was not being overpaid when the Grievant, through the Branch Vice President Palladini, brought the issue of potential inaccurate pay status to her attention in May 2007, five months after the alleged incorrect step placement had begun. Palardy wrote to Rogers, and sent the Union, the following:

The new voluntary change to lower level rules have been applied to her. This came into effect June 2006. An employee's voluntary change to lower level (including the bidding process) requires that the current higher level salary be slotted into the lower level grade. These actions will normally result in a salary promotion and may also result in a change in the next step date, depending on the dollar amount. More information on this is available on the Comp Update 2006-04 and 2006-05.

She is not being overpaid.

The Service's failure to present a reasonable explanation of the Service's subsequent change of opinion in light of the written assurance it had previously given to the Grievant supports a finding that the Service did not provide the Grievant with an adequate explanation to support the Letter of Indebtedness. I note that based on the Service's May 2007 affirmation that the Grievant was on the correct pay step, the Grievant detrimentally relied upon the Service's assurances and purchased a house based on her salary at that time.

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This case is distinguishable from the decisions submitted by the Service in which the arbitrators concluded that the Service provided a sufficient rationale for the indebtedness of overpayment to the employees at the time the Letters of Demand were issued, and proceeded with an analysis of whether the employees were entitled to a waiver pursuant to ELM Section 437.6, an issue that was not before me. [Compare USPS and NPMHU, Case No. I98M-1I-C 00163489 (Arbitrator Meyers, 2002); USPS and NALC, Case No. J98N-4J-C 01211320 (Arbitrator Dilts, 2002)].

AWARD

Management violated Article 28 of the National Agreement, when on September 23, 2008 the Grievant was issued a Letter of Demand for an alleged payroll overpayment of \$5,335.81, by failing to provide adequate rationale for the indebtedness in light of the Service's earlier affirmation that the Grievant had not been incorrectly placed at various pay steps between December 2006 and May 2007. Accordingly, the grievance is sustained. The Letter of Demand issued to the Grievant is to be rescinded. Nonetheless, the Grievant is to remain on the corrected pay step.

Respectfully submitted by:



Sherrie Rose Talmadge, Arbitrator