

C # 16518

A & B

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration
between

UNITED STATES POSTAL SERVICE

"Service"
-and-

NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO

"Union"

Grievant:
Class Action
Post Office:
Staten Island, NY
Case No.:
A90N-1A-C 95063232
A90N-1A-C 95063233

NALC GTS No.: 10103
14916

BEFORE: Kathleen M. Devine, Arbitrator

APPEARANCES:

For the U.S. Postal Service:
David H. Rudy, Labor Relations Specialist

For the Union:
George Mignosi, Vice President, Branch 41
Joseph Carlucci, T/A, NALC

Place of Hearing: 550 Manor Road, Staten Island, New York

Date of Hearing: February 11, 1997

AWARD: The grievances are arbitrable.

Date of Award: March 7, 1997

Kathleen M. Devine
Kathleen M. Devine, Arbitrator

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BACKGROUND

These grievances pertain to an issue regarding the Union's contention that supervisory employees should be removed from their positions and referred to EAP for their behavior and actions toward craft employees. The Union alleged that the Postal Service's actions violated Article 19 of the National Agreement. The Postal Service denied the Union's grievances.

The undersigned was duly designated as arbitrator of the dispute described below. A hearing was held at the postal facility located at 550 Manor Road, Staten Island, New York on February 11, 1997.

The Postal Service was represented by David H. Rudy, Labor Relations Specialist. The Union was represented by George Mignosi, Vice President, NALC Branch 41. At the hearing, the Postal Service raised the issue of arbitrability. As a result, I suspended hearing the grievances on their merits. Instead, the parties were provided the opportunity to present evidence and testimony in support of their positions regarding the arbitrability issue. They did so. At the conclusion of the hearing on February 11, 1997, the record was declared closed.

DISCUSSION AND FINDINGS

The Issue

At the hearing of February 11, 1997, the parties stipulated to the following issue:

1. Are the grievances arbitrable?

Relevant Contract Language

ARTICLE 1 UNION RECOGNITION

Section 1. Union

The Employer recognizes the National Association of Letter carriers, AFL-CIO as the exclusive bargaining representative of all employees in the bargaining unit for which it has been recognized and certified at the national level - City Letter Carriers.

Section 2. Exclusions

The employee group set forth in Section 1 above does not include, and this Agreement does not apply to:

1. Managerial and supervisory personnel;
2. Professional employees;
3. Employees engaged in personnel work other than a purely non-confidential clerical capacity;
4. Security guards as defined in Public Law 91-375, 1201(2);
5. All Postal Inspection Service employees;
6. Employees in the supplemental work force as defined in Article 7;

7. Rural letter carriers;
8. Mail handlers;
9. Maintenance Employees;
10. Special Delivery Messengers;
11. Motor Vehicle Employees;
12. Postal Clerks.

Positions of the Parties

The Postal Service maintains that the grievances are not arbitrable in that supervisors are not covered by the National Agreement and, therefore the arbitrator does not have the authority to proceed in any action toward a supervisor. Specifically, it refers to Article 1, Section 2 of the National Agreement which clearly excludes "Managerial and supervisory personnel" from the terms of the Agreement.

In further support of its position, the Postal Service produced several arbitration awards on this point. In Case No. S1N-3P-C-16591, Arbitrator Robert W. Foster stated:

The first problem with this Grievance as originally filed and processed through the Grievance Step procedure is that the stated requested remedy of removing the supervisor from his position is to ask the arbitrator to exceed his jurisdictional powers that are derived from the Agreement. This is so because Article 1 of the National Agreement excludes supervisory personnel from the coverage of the Agreement. Even though it may be said that Paragraph 666.2 of the Employee and Labor Relations Manual is applicable to supervisory personnel, this provision is nevertheless enforceable by the Arbitrator only as to bargaining unit employees who are covered by the Agreement and not supervisors. Accordingly, I am without contractual authority to issue an award that would involve disciplinary action against the supervisor, or cause management to change the supervisor's assigned duties, since these are rights retained exclusively by management.

In addition, Arbitrator Thomas F. Levak, in Case No. W7N-5M-C 20208, stated:

The jurisdiction and authority of a Service Panel Arbitrator is limited by the National Agreement. Agreement Articles 1.2 and 3 expressly exclude supervisory personnel from the Agreement's coverage and reserve unto management the exclusive authority to deal with supervisors on disciplinary or administrative matters. Therefore, it necessarily follows that the Arbitrator has no jurisdiction or authority to entertain a case that has as its sole aim a directive from the Arbitrator that a particular supervisor be disciplined or be administratively dealt with.

The fact that the Agreement incorporates certain ELM provisions including the Code of Ethics, does not aid the Union's case. Even assuming that those ELM provisions apply to all Service employees, including supervisors, those provisions are incorporated into the Agreement only so far as bargaining unit employees are concerned. See, C8N-4C-C 5208, Dobronski, 12/12/80.

Likewise, the Postal Service refers to the award of Arbitrator B.R. Skelton, in Case No. S7N-3V-C 11041, whereby he ruled on this issue as follows:

Because supervisors are excluded from the bargaining unit, grievances seeking reprimand, suspension, or discipline of supervisors have no legitimate contractual basis and to order such remedies is beyond the arbitrator's authority.

The grievance as presented in the earlier steps and appealed to arbitration is not arbitrable.

Finally, the Postal Service points to Case No. C4M-4K-C-16289, where Arbitrator George E. Bowles indicated the following:

There is nothing in the Agreement between the parties in this case, or any decided Postal Service cases, that would indicate in any way that an Arbitrator can order the discipline of a supervisor.

In all, the Postal Service maintains that the above referenced awards support its position that the grievances are not arbitrable.

Accordingly, and for the foregoing reasons, the Postal Service maintains that the grievances should be dismissed in their entirety.

The Union, on the other hand, maintains that the grievances are arbitrable. It argues that the decision rendered by National Arbitration Panel Arbitrator Carlton J. Snow pertains to the same issue as that raised in these grievances. Specifically, the Union submits that Arbitrator Snow ruled on whether the Joint Statement on Violence and Behavior in the Workplace constituted an enforceable agreement between the parties so that the Union may use the negotiated grievance procedure to resolve disputes rising under the Joint Statement. It maintains that Arbitrator Snow stated:

The grievance procedure of the National Agreement may be used to enforce the parties' bargain, and arbitrators have available to them flexibility found in arbitral jurisprudence when it comes to formulating remedies, including removing a supervisor from his or her administrative duties.

Further, the Union points out that in Case No. 95060188 before Arbitrator Garry J. Wooters, the same issue of arbitrability was raised regarding the discipline of a supervisor. Arbitrator Wooters referred to the Snow Award in his Opinion, stating:

The Union contends that this grievance is based in part on the Joint Statement on Violence and Behavior in the Workplace and is arbitrable under the terms of the Snow Award.

I indicated on December 4, 1996 that it was my view that the Union claims presented an arbitrable grievance, but that the remedy sought might be beyond the authority of the arbitrator. I affirm those rulings here.

In USPS and NALC, 94024977 (Snow 1996) the arbitrator held that the Joint Statement is a contract, binding on all of the signatories including the NALC and the Postal Service. As such, it may form the basis for a grievance. The Union grievances in this case are based, in part, on the Joint Statement. Thus, they present a proper case for the exercise of arbitral authority.

Thus, the Union maintains that the Wooters Award bases its determination on that by an arbitrator from the National Arbitration Panel and supports its decision here. It also argues that the arbitration awards produced by the Postal Service are not relevant in that they occurred prior to the Snow Award (August 16, 1996).

In all, the Union maintains that the grievances are arbitrable.

Opinion

The issue in dispute here is whether the two (2) grievances filed by the Union are arbitrable. The grievances involve behavior of a supervisor toward a craft employee. The Union's requested remedies include removal of the supervisor from his position, discipline and or referral to EAP.

The Postal Service argued that since supervisors are excluded from the National Agreement, it is beyond the scope of my authority as an arbitrator to render a decision under the terms of the NALC National Agreement. The Postal Service presented numerous arbitration decisions which supported its position.

I have reviewed the arbitration awards presented by the Postal Service and, if not for the National Award of Carlton Snow, I would have agreed with the Postal Service. However, the Snow Award, which was issued after the awards presented by the Postal Service, has changed the scope of arbitral authority, as it pertains to actions of a supervisor contained within the Joint Statement on Violence and Behavior in the Workplace.

The parties, in the Snow Award, discussed the issue of whether the Joint Statement on Violence and Behavior in the

Workplace constituted a contractually enforceable agreement between the parties. The Union argued that "when its members are disciplined for violent acts, the Joint Statement is often cited in support of the Employer's disciplinary action against workers. In return, the Union asserts that the Employer has agreed in the Joint Statement that supervisors who use violent tactics should also be disciplined. The Union contends that the grievance arbitration procedure is the appropriate forum for determining whether a supervisor should be disciplined for violating the Joint Statement" (Snow Award at page 5).

The Employer, in its argument before Arbitrator Snow claimed "the Joint Statement at no point shows an intent by the parties to be contractually bound. Moreover, management asserts that it received no consideration for a right of the Union to use the grievance procedure in order to prevent a supervisor from managing letter carriers" (Snow Award at page 6).

Snow, on page 18 of his Award found that "a reasonable person would have viewed the surrounding circumstances of this transaction as contractually obligating the parties to each other". That is, Snow concluded that the Joint Statement on Violence and Behavior in the Workplace is binding upon the parties.

Finally, Snow concluded, on pages 20 and 22 of his Award, as follows:

The inference is clear that the collective bargaining agreement is presumed by the parties to be the enforcement mechanism used to resolve their disputes, differences, disagreements, and complaints with regard to conditions of employment. The Joint Statement did not provide an alternative means of enforcement. It is concerned with a condition of employment. Accordingly, it is reasonable to conclude that the Union may use the negotiated grievance procedure to resolve disputes under the Joint Statement on Violence and Behavior in the Workplace.

* * *

...The grievance procedure of the National Agreement may be used to enforce the parties' bargain, and arbitrators have available to them flexibility found in arbitral jurisprudence when it comes to formulating remedies, including removing a supervisor from his or her administrative duties.

Thereafter, Arbitrator Garry J. Wooters ruled on the issue of the arbitrability of a dispute whereby the Union's requested remedy included removal of a supervisor. Wooters based his Award, in part, on the Snow Award and found that "the Arbitrator has the authority to hear these claims and, if necessary, determine the appropriate remedy."

Based upon the finding of National Arbitrator Carlton Snow and the subsequent decision of Arbitrator Wooters, I find no evidence that would cause me to deviate from their findings regarding arbitrability. The Union has the right to proceed through the grievance procedure on issues relating to

the Joint Statement on Violence and Behavior in the Workplace. Thus, I find that the grievances are arbitrable.

AWARD

1. The grievances are arbitrable.

March 7, 1997.

Kathleen M. Devine
Kathleen M. Devine, Arbitrator

STATE OF NEW YORK)
COUNTY OF SUFFOLK) ss.:
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I, KATHLEEN M. DEVINE, do hereby affirm upon my oath as Arbitrator that I am the individual described herein and who executed this instrument, which is my Award.

March 7, 1997.

Kathleen M. Devine
Kathleen M. Devine, Arbitrator