

REGULAR ARBITRATION PANEL

IN the Matter of the Arbitration) GRIEVANT: Class Action
BETWEEN) POST OFFICE: New Haven CT
UNITED STATES POSTAL SERVICE) CASE No.: B16N-4B-C 18160575
and) UNION: 19-122-18WHV
National Association of Letter Carriers) DRT No.: 14-430458

BEFORE: DONALD J. BARRETT, ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Mr. John Gigola Jr., LR Specialist

For the Union: Mr. Vincent Mase, Esq. Branch 19 President

Place of Hearing: New Haven CT Post Office

Date of Hearing: August 21, 2018

AWARD: The grievance is sustained

Date of Award: September 9, 2018

Award Summary

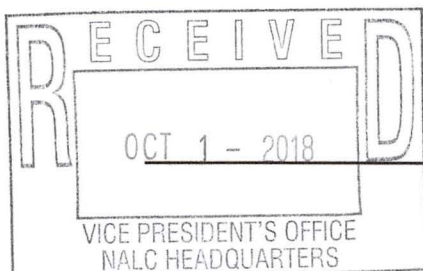
RECEIVED

SEP 17 2018

John J. Casciano, NBA
NALC-New England Region

The Union provided convincing evidence that the Service failed to provide the requested documentation pursuant to the Martin-Page Agreement.

While the Service offered that they did provide such information to the Union steward, there is not sufficient evidence to demonstrate that he did so. The steward denies receiving it, and absent such proof of delivery there can be no alternative than a finding in favor of the Union.



Arbitrator

STATEMENT OF PROCEEDINGS:

This matter was brought to an arbitration hearing on August 21, 2018 at the Post Office located at 50 Brewery Street, New Haven CT pursuant to the provisions of the 2016-2019 National Agreement, or Agreement, or Contract between the National Association of Letter Carriers, or the Union, and the U.S. Postal Service, or the Service, or Management.

The parties to this hearing first brought this matter to their grievance procedure but were not able to resolve their differences, and the Union then timely appealed this grievance to arbitration.

I was selected to hear this grievance as a current member of the parties' regular arbitration panel, and did afford the parties at hearing a full, fair and objective opportunity to be heard, to present argument, evidence, and witnesses in support of their respective positions.

The parties intended to present witnesses at hearing, and requested that each witness be duly sworn an oath prior to being examined. This request was so honored.

The Union called the following witness(s):

Mr. Fernando Angulo, Union Steward at the Whitneyville office.

Mr. Jess Friedman, Formal Step A Union Representative¹

The Service called the following witness(s):

Mr. Chris Rodgers, (Former) Manager, Customer Services, New Haven CT.²

The Union provided an oral **Opening & Closing Statement**.

The Service provided a written and oral **Opening Statement**, and an oral **Closing Statement**.

At the conclusion of this hearing, **the Union** provided three regular panel arbitration decisions, and one National Labor Relations Board (NLRB) decision for my consideration. One of the regular panel decisions submitted was authored by me. Please know that I have thoroughly reviewed each decision, and shall comment if found to be applicable in the opinion.³

¹ Mr. Friedman was presented as a rebuttal to Management testimony.

² Mr. Rodgers testified telephonically over the objection of the Union. He now works in Raleigh, NC and this was the most efficient means of providing his testimony. I did inform the parties of the challenge(s) of not having a witness present so that all parties may observe such testimony.

³ The Union also submitted one Expedited Arbitration decision. However, because of the nature of such decisions no weight was given to it.

JOINT EXHIBITS:

Joint 1, The National Agreement, inclusive of the parties Joint Contract Adminsitartion Manual (J-CAM)

Joint 2, Moving Papers, Pages 1-71

UNION EXHIBITS:

U-1, Step B Decision, Number B16N-4B-C 18160571 (Provided at closing)

STIPULATRED FACTS NOT IN DISPUTE:

The parties offered none.

ISSUE TO BE DECIDED:

"Did management violate but not limited to article 15, 17 and 31 of the National Agreement when they refused to provide the union documents relating to the grievance resolve for grievance # 19-077-18? If so, what is the appropriate remedy?"⁴

BACKGROUND:

Grievance number 19-077-18 was settled at the Formal Step A level resulting in a stipulation that Management will "cease and desist" of future violations of applicable contractual articles, and a particular city letter carrier would have sick leave paid to him, requiring, among other things a pay adjustment for this employee.

There is no dispute that the employee received the sick leave adjustment timely, however a previous local agreement known as the "Page-Martin Agreement" stipulates that, "Copies of all adjustment paperwork will be provided to the NALC, Branch 19 president at time of completion."

The Union takes the position that this local agreement has been modified over time to allow Management to provide proof of such adjustments to the Union office, or a Union official yet in this instance they failed to provide such proof, in spite of numerous requests for information (RFI) seeking such proof.

Management takes the position that the supervisor, Mr. Rodgers did comply when he left a copy on the steward's case, though the steward denies receiving such.

⁴ Step B Issue

RELEVANT CONTRACT PROVISIONS RELIED UPON:

Article 15, Grievance-Arbitration Procedure

Section 1. Definition

"A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement."⁵

Article 17, Representation

Section 1. Stewards

"Stewards may be designated for the purpose of investigating, presenting and adjusting grievances."

Section 3. Rights of Stewards

"The steward, chief steward or other Union representative properly certified in accordance with Section 2 above may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied."⁶

Article 31, Union-Management Cooperation

Section 3. Information

"The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining of the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information."

POSITION OF THE PARTIES IN THIS MATTER:

The Union:

⁵ See Agreement, Pages 64-77 for full text

⁶ See Agreement, Pages 81-86 for full text

The Union maintains that the "Page-Martin Agreement"⁷ mandates the Service to fully process all pay adjustments within five (5) working days of a grievance resolution, and that such a resolution for grievance number 19-077-18 was settled at the formal Step A level for letter carrier Korky.

That the adjustment was made timely but the other part of the "Page-Martin Agreement" was not complied with by local Management when they failed to provide the Union with documented proof of the adjustment.

That the Union made requests for this documentation after the resolution on February 3rd, and the adjustment made on February 7th on February 12th, 13th, 14th, and 15th that Management ignored, and failed to provide this information/documentation until the Step B grievance level.

That previous grievance settlements, arbitration, and NLRB decisions have all mandated local Management to comply with such requests, to no avail.

That Management continues to ignore the contractual rights of the Union to obtain relevant information for the processing, or adjudication of grievances, and therefore the Union maintains the Service has again violated the Agreement, and requests the arbitrator find in favor of the Union, order the Service to cease and desist future violations, and pay the Affected letter carrier, and Union steward fifty dollars for their rights being violated. Also, that Management be ordered to pay the full costs of this arbitration hearing, pay the Union one thousand dollars, and any other remedy the arbitrator deems appropriate.

The Service:

The Service maintains that there is no violation of the Agreement, and this grievance should be denied in its entirety.

That there is no dispute the subject pay adjustment was made for the employee timely, and provided to him by the manager, Mr. Rodgers, who brought it to him after the employee had left it in his office.

That the manager did provide a copy of the adjustment to the steward in the same manner he always did so by placing it on the steward's carrier case as the manager left the office at the end of the day on February 7th.

That there is no logical way to prove the document was not placed there despite the steward's contentions. That the manager has placed other such documents on the steward's case in an envelope with no problems encountered.

That providing requested information to the Union in this manner, either by placing it on the steward's case, under the Union office door, sent by e-mail, or placed hand to hand has been the past practice employed, with no such issues in the past.

⁷ See J-2, Page 16

That any payment to the Union, the steward, and/or the employee would constitute unjust enrichment,, as the employee has already been paid, and the steward is paid by the Service to perform his Union duties, and the Union has not demonstrated a violation of the Agreement, or that past settlements are relevant to this subject grievance entitling them to any payment.

The Service requests this grievance be denied in its entirety.

FINDINGS & OPINION OF THE ARBITRATOR:

The matter before me presents a direct challenge to the veracity of two witnesses that cannot be easily resolved, and it must be left to determine what is the most likely, most reasonable conclusion that can be drawn from the evidence alone?

First, there is no dispute that the adjustment of the employee's sick leave was completed timely, and the proof of such, related to the previous grievance was provided to the employee.

Secondly, the relevancy of this grievance is directly related to the part of the "Page-Martin Agreement" that mandates copies of all adjustments be provided to the Union. In the subject local agreement it specifically states that it will be provided to the branch president at the time of the adjustment's completion, however there is apparently an understanding, or past practice that allows for the paperwork to be provided to other Union officials in place of the president.

Management, through Mr. Rodgers, claims to have left such proof in an envelope on the steward's carrier case on February 7th as he left for the day, while the steward was still on his route.

And that the steward claims he never received this envelope/document, and made four requests for information after February 7th seeking this proof of the adjustment having been made, and that each RFI was ignored.

Whether this deviation from the actual local agreement leads to a state of confusion between the parties, and leads to the potential for misunderstandings is evident by the grievance before me, but is not subject to arbitral judgement at this time.

What is subject to judgement is whether the Page-Martin agreement, and through that the various articles of the Agreement as cited by the Union has been violated, and I find that it has been.

Management's only witness, Mr. Rodgers acknowledges processing the sick leave adjustment for letter carrier Korky within five days, and providing Korky with a copy of the adjustment.

Rodgers states that the same day he placed a copy of it into a large manila postal envelope, addressed to steward Angulo and placed the envelope on the steward's case as he (Rodgers) was leaving for the day, and that Angulo was still out of the office on his route.

The steward offers that he never received the envelope, and the document of proof of the subject adjustment.

Here we have not only a divergent of claims, but an obvious, and tragic lack of reasonable communication between the parties.

To start with, the manager appears not to have ensured that the steward did in fact receive the document, and simply assumed he had it, while the steward, having not received the document within the allotted five (5) working days per the Page-Martin agreement then began submitting four separate requests for the information/document rather than simply, and reasonably speaking to the manager, or the supervisor's to whom he made the RFI's, and inquiring as to the document's whereabouts. And it is apparent that it mattered not that Mr. Korky had received his copy of the adjustment, and the Union knew this fact but only that they did not get their own copy.

Such a proactive approach on the part of either of the responsible parties may have easily resolved the matter equitably. That such a simple process was not undertaken has clear, and costly ramifications for both sides, in the immediate, and long term.

That a practice exists where Management may provide the Union with such documentation in various ways was confirmed by the Union's rebuttal witness, Mr. Friedman who offered that, "In general, I gave Chris Rodgers permission to give documents to Fernando, and not me"⁸

Mr. Friedman offers further that both he, and Angulo have received "...paperwork on occasions as well" from Rodgers.⁹

Mr. Rodgers states, with insistence that he left the envelope on the "designated spot" as he has done in the past when leaving Angulo documents on his way out the door around six (6) PM on February 7th, and did not hear back from Angulo so assumed there was no problem until Friedman and he met at formal step A.

Here is where the divergent paths lead to the only outcome left to the arbitral process.

While the steward offers that if only he had received the information he would not have filed the instant grievance, and the manager offers that he left the information for him we have what is commonly referred to as a "he said, he said" situation, both insisting they are correct yet with only one ultimately in a position to prevail, no matter the doubt cast upon it.

The Page-Martin agreement, with its prevailing practice excluding the branch president from being the exclusive recipient for such documentation being the dominant and compelling evidence before me mandates that such documentation be provided to the Union within the same five (5) working day period would further mandates that in so doing Management must also ensure that the Union does, ...

⁸ Hearing testimony

⁹ See J-2, Page 10

...in fact receive such. Absent such "proof" of receipt Management is left vulnerable to such a charge as that which is before me.

There is overwhelming arbitral, and legal precedent for the rights of the Union to obtain information relative to their obligation to determine if a grievance exists, or to process a grievance. Just as Management alone determines if discipline is going to be taken, the Union is the sole arbiter of what information is needed for these reasons, and when an agreement is made to provide such information, such as Martin-Page, and previous grievance settlements offer relief from similar issues yet still information the Union is entitled to is not forthcoming, it is not only a violation of the local agreement, but the National Agreement as well.

Without such proof that the subject documentation was provided to Angulo by Rodgers, than there is only argument, not evidence, and evidence must trump everything else.

Further, notwithstanding the fact that, in my opinion the steward should have simply had a conversation with someone in Management about the RFI's he did submit four (4) separate requests to Management that appear to have gone unanswered in any fashion. That alone represents a clear violation of the Agreement, per Articles 17 and 31.

"Where the parties themselves settle a grievance the evidence of intent as to the meaning of a provision carries special weight."¹⁰ Such prior settlements such as the Martin-Page Agreement, or Union Exhibit Number One leave no room for ambiguity as to the intent, and expectation to provide timely the information the Union has a contractual right to receive.

It is not for the arbitrator to determine the relevancy, or degree of importance the Union places upon their request for such information, nor if the information appears to be of a de minimis value because that judgement rests exclusively with the Union to determine.

It is the Service's responsibility to provide such information timely when such requests are made pursuant to contractual mandates.

The Service, in the instant case simply cannot overcome the burden to prove that the Page-Martin document(s) was in fact provided to the Union. Without such proof, or evidence before me I am left with the only reasonable conclusion that a violation of the Agreement has transpired.

As stated earlier in this opinion, it is an unfortunate situation that more reasonable interactions between the parties did not take place which directly led to this grievance, and its outcome.

While the Union has demonstrated a violation of the Agreement, I am of the opinion that neither side prevails entirely when a more moderate approach to interaction between the parties fails to be encouraged.

¹⁰ See Bendix-Westinghouse Automotive Air Brake Co., 23 LA 706, 710 (Mathews, 1954)

AWARD:

This grievance is sustained.

However, while the Union prevails, I am hesitant to reward them with their requested remedy of a monetary award to the original grievant, who lost no salary or benefits. Nor do I find the Union steward entitled to any monetary disbursement. All the while he was processing this grievance he was "on the clock", and being paid by the Service pursuant to Article 17, and I find no harm done to him. On the contrary, I find his lack of any sincere effort to resolve this matter through personal involvement with Management to be unfortunate.

That said, the Union need not have to pursue a grievance similar to previously settled issues. Management has a contractual obligation to ensure that such occurrences do not repeat. In the instant matter, this could have been accomplished with an established procedure for demonstrable proof that such requests for information/copies of adjustments are provided to the Union timely. That is lacking in the instant case.

Therefore, to better address the need to ensure compliance with such obligations, I find the following remedy to be fair, and reasonable to the outcome of this grievance.

The Service is hereby ordered to comply timely with all appropriate requests for information/adjustments, and continued failure(s) to do so may be viewed with prejudice in a future proceeding.

The Service shall meet with the Union president no later than 30 days from receipt of this decision to present a viable procedure to ensure that information requests/documents/adjustments are provided in such a way that acceptable proof of receipt is established.

The Service shall pay to the Union no later than 30 days from the receipt of this decision the sum of three (3) hundred dollars toward the Union's expense of pursuing this grievance.

The arbitrator shall retain jurisdiction over the implementation of this award for a period of sixty (60) days after receipt of this decision.

Nothing Follows.