C-33325

REGULAR ARBITRATION

In the Matter of the Arbitration

Between

UNITED STATES POSTAL SERVICE,

and

NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

Grievant: CLASS ACTION

Case No. B16N-4B-C 17591041

Post Office: NEW HAVEN, CT (ALLINGTOWN)

DRT. No. 14-416-716

BEFORE ARBITRATOR: John F. Markuns

APPEARANCES:

For the U.S. Postal Service: Glenn C. Smith, Labor Relations Specialist, Hartford, CT

For the Union: Vincent J. Mase, President Branch 19

Date of Hearing: May 4, 2018

Place of Hearing: 24 Research Parkway, Wallingford, CT 06492

AWARD: The grievance is sustained.

Date of Award: May 21, 2018

Award Summary

Based on the undisputed facts, Management violated Articles 15 and 19 of the National Agreement. These violations are on point with a recent Regular Arbitration Award, *USPS and NALC*, Case No. B11N-4B-C17565292 (Barrett, 2018). Accordingly, the grievance is sustained, and relief is ordered consistent with the controlling on-point case.

BACKGROUND

As reflected in the Formal Step A grievance December 5, 2017, the Union grieved alleged violations of Articles 3, 15 and 19 of the National Agreement and specifically citing ELM 662.2(1), 665.16, 665.44, the F-21, M-32 as well as previous DRT decisions. The subject grievance was originally filed August 19, 2017, but was remanded at Step B on three occasions: first on September 21, 2017 to afford the Union time to complete 6 requested interviews; and again on November 2 and November 21, 2017 with directions to the parties to schedule and hold a Formal Step A meeting. The Arbitrator was appointed by notice dated February 28, 2018. A hearing was convened on May 4, 2018. The parties submitted the National Agreement and JCAM as Joint Exhibit 1 and the Step B decision and accompanying documents as Joint Exhibit 2. At the outset of the hearing, Management conceded that it had committed the alleged violations based on the undisputed facts set out in the signed December 5, 2017 Joint Step A grievance form. The parties consequently limited their presentations to the issue of remedy. The parties jointly submitted Regular Arbitration Award, *USPS and NALC*, Case No. B11N-4B-C17565292 (Barrett, 2018) (hereinafter "Barrett Award.") The Union submitted an August 31, 2017 NALC memorandum to Branch Presidents from John Casciano, National Business Agent, Boston Region (U-1). Management submitted email correspondence related to efforts to resolve the subject grievance based on "settlement language" in the Barrett Award (M-1 and M-2). Several witnesses were made available but none were called to testify by either party.

ISSUE

The issue before the Arbitrator as presented by the parties is:

> Did management violate Articles 3, 15 and/or 19 of the National Agreement specifically the ELM 661.2 (1), 665.16, 665.44, the F-21, M-32 and previous DRT decisions when Postmaster Sullivan manually entered carriers onto operations that they were not performing, falsely indicating the carriers were doing collections or parcel instead of delivering mail. If so, what is the appropriate remedy?

FINDINGS OF FACT

As noted above, the facts underlying this arbitration are not in dispute and are supported by evidence in Joint Exhibit 2. On or about August 10 or 11, 2017, Postmaster [Tom] Sullivan's Employee ID is # 01609708. Postmaster Sullivan put carriers on Operation 731 and/or 733. All eight carriers cited returned to the office after 19:00

hours. The carriers cited were not doing collections or parcel runs. The listed carriers all had their rings entered by Postmaster Sullivan and Supervisor E. Jackson without permission or knowledge to reflect an earlier return to office time.

A similar incident in the same installation occurring a little over two months earlier was the subject of a separate grievance. This grievance ultimately resulted in the issuance of the Barrett Award on February 26, 2018. Management contacted the Union by email on March 8, 2018 and again on May 4, 2018 in attempts to settle the subject grievance based on the language in components 1 and 3 of the Barrett Award.

The award included three components as follows:

1. All data collected, and/or maintained related to any carrier's clock rings during the period cited in this grievance shall be null and void for data record keeping, and shall not be relied upon in any future evaluations.

2. The Union shall be paid the sum of one thousand dollars ($1,000) for having to take this matter to arbitration after having received a Step B Team decision finding Management in violation of the Agreement for same/similar issue in the same office. [1]

3. The Service is ordered to cease and desist from inappropriately changing employee clock rings, and shall in all otherwise instances follow the mandates of the Agreement, and its inclusions.

THE PARTIES' POSITIONS

The Union maintained it did not accept Management's settlement offer because it only encompassed components 1 and 3 of the Barrett award and did not include component 2, i.e., monetary compensation to the Union. In response, Management acknowledged that the Barrett Award was final and binding and carried authoritative force. However, Management took issue with component two of the remedy imposed in the Barrett Award, i.e., payment of $1,000 to Union for having to take the matter to arbitration after having received a Step B decision finding Management in violation of the Agreement for a same/similar issue. Management contended that the case should not be before the Arbitrator today and should be deemed moot because from the

[1] Arbitrator Barrett also included the following parenthetical explanation with regard to this component of the Award: "The Union asks for a lump sum of one hundred dollars for each carrier cited, as a punitive award. A punitive award is intended solely to punish and deter the breaching party. I am not inclined to 'punish' anyone as I do not find the Service willfully caused harm to the employees. Any subsequent same issue may alter that opinion."

date of the award the managers have ceased and desisted and have stopped the practice of altering clock rings in the New Haven Office.

Management contends that the Union's failure to resolve, settle or stipulate that the Barrett Award is applicable to the instant case is a punitive action and should be considered unjust enrichment by the Union, and is nothing more than the Union attempting to take another bite out of the apple. Management argues that under the circumstances, the language of component two of the Barrett Award should be applied against the Union because the Union pressed forward with arbitration despite already having an award granting it the relief it was seeking. Management maintains that the grievance should be denied in its entirety and that Management should be awarded $1,000 plus all the costs associated with the arbitration.

The Union countered that Management's request for relief is not one that the Arbitrator has the authority to grant under the National Agreement. The Union observed that with regard to the cost of witnesses, Article 15 of the National Agreement requires that employees called as witnesses during regular working hours must be paid by Management.

ANALYSIS AND DISCUSSION

Any well-reasoned and well-written prior regular arbitration decision has persuasive qualities where it is "on point" with the subject matter of the subject grievance; however, to be given preclusive effect it must be between the same parties, must invoke the same fact situation, must pertain to the same contractual provisions, must be supported by the same evidence, and must concern an interpretation of the specific agreement before the Arbitrator. Consequently, where a new incident gives rise to the same issue that is covered by a prior award, the new incident may be taken to arbitration, but in the absence of materially changed circumstances, it may be controlled by the prior award. Elkouri & Elkouri, *How Arbitration Works,* Eighth Edition (2016), 11.2A., pp 11-9; 11-10 (footnote and citations omitted).

There can be little doubt that the Barrett Award is on point and thus controlling as to the subject case. The dispute addressed by the Barrett Award was between the same parties and occurred at the same installation. It invoked the same fact situation, relied on similar evidence and pertained to the same contractual provisions governing the parties. The presumption must be that the Barrett Award, including its full remedy, is controlling.

Clearly, Management did not moot the subject grievance in that it did not offer the full relief requested by the Union. The Arbitrator also does not find Management's offers of settlement and

the Union's lack of response sufficient to establish that there were changed circumstances such that the Barrett Award should not be considered fully controlling. Management has taken the position that the component of the Barrett Award ordering monetary compensation to the Union should not apply to the subject grievance, and that it is in fact the Union who should be compensating Management for the expenses associated with this arbitration.

The apportionment of costs associated with arbitration, both as to witnesses and the fees and expenses of the arbitrator are governed by Article 15.4A. The Arbitrator finds no authority to deviate from the arrangements agreed on by the parties with regard to all of these costs.

However, the $1,000 to the Union under component 2 of the Barrett Award is a different matter. This sum was expressly awarded "for having to take this matter to arbitration after receiving a Step B Team decision finding Management in violation of the Agreement for a same/similar issue in the same office." The same thing happened in the subject case, i.e., the Union had to take this matter to arbitration after receiving a Step B decision finding Management in violation of the Agreement for a same/similar issue in the same office. The Arbitrator cannot find any material circumstances that would warrant excluding component two from the award in the subject case.

AWARD

The grievance is SUSTAINED with the following relief, consistent with the Barrett Award:

1. All data collected, and/or maintained related to any carrier's clock rings during the period cited in this grievance shall be null and void for data record keeping, and shall not be relied upon in any future evaluations.

2. The Union shall be paid the sum of one thousand dollars ($1,000) for having to take this matter to arbitration after having received a Step B Team decision finding Management in violation of the Agreement for same/similar issue in the same office.

3. The Service is ordered to cease and desist from inappropriately changing employee clock rings, and shall in all otherwise instances follow the mandates of the Agreement, and its inclusions.

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Arbitrator