

C#00011

GERALD COHEN

2/24/82

Article X Annual Leave

IN ARBITRATION

27250 (C8C-4F-C)

UNITED STATES POSTAL SERVICE,) Case No. C8C-4F-C 27250;
and) Arbitrator's File 81-139-709;
AMERICAN POSTAL WORKERS UNION,) Date of Hearing:
JUNE V. MANUEL, Grievant.) December 14, 1981,
Cincinnati, Ohio.

APPEARANCES

For the Postal Service:

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FROM THE OFFICE OF
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O P I N I O N

Issue

Did the Postal Service violate the National Agreement
and/or the Handbooks and Manuals by reducing Grievant's annual-
leave balance and by charging her with leave without pay for
16 hours?

Facts

According to the evidence, on October 29, 1980, Grievant
filed a Form 3971 requesting annual leave for December 26, 27

and 28, 1980, in order to attend a family wedding. The leave was approved, and Grievant was absent from the Post Office on the three days in question.

Grievant received her pay for pay period 1-81, which included the dates on which she had previously taken annual leave. The information given on the check stub appeared to be proper. When Grievant received her pay for pay period 2-81, her previously stated annual leave balance of 16.31 hours had been changed to show that she had a negative balance of annual leave of 33.69 hours. In addition, it was shown that she was charged with 16 hours of leave without pay. As a result, her pay for that period was reduced by some \$220.00.

Grievant inquired as to the reason for the change, and was told that when her leave status for 1980 had been calculated, she had been treated as being in leave status 8, when she should have been in leave status 6. The adjustment which occurred in pay period 2-81 reflected a change of leave status from leave category 8 to category 6. The difference between the two categories is 40 hours of leave a year, and that precipitated the reduction in her annual leave. She had therefore taken more leave than she was entitled to, and her personnel records therefore showed a negative leave balance.

Grievant testified that she entered employment with the Postal Service on 12-21-65. The evidence was that, after 15 years

of service, leave category rose from 6 to 8 with a corresponding increase in earned annual leave.

Grievant testified that she noticed the increase in her leave category status at the beginning of 1980, and was under the impression that leave would increase at the beginning of the year for that particular year.

Leave for 1980 commenced with pay period 1, which was the period from 12/15/80 to 12/28/80. Pay period 1 for 1981 was from 12/13/81 through 12/26/81. Pay period 2 for 1981 was 12/27/81 through 1/9/82.

Discussion and Opinion

The position of the Union is that Grievant is entitled to be relieved of repayment of the excess leave under Section 437.6 of the Employee & Labor Relations Manual. This section states that an employee will be relieved of responsibility for repayment if the overpayment occurred through administrative error of the Postal Service, if the employee acted reasonably without any indication of fraud, misrepresentation, fault, or lack of good faith, and if collection of the claim would be against equity and good conscience and would not be in the best interest of the Postal Service.

Grievant claims that she has satisfied all of these conditions. She points out that the overpayment was obviously the result of administrative error on the part of the Postal

Service. She states that she acted reasonably in that she made no misrepresentation, was not guilty of any fraud, and her actions were in keeping with her understanding of her leave entitlement. Therefore, she was without fault, and did act in good faith. She further urges that the collection of this excess leave time would be against equity and good conscience, in that she is being held responsible for someone else's mistake.

The Postal Service advances two novel arguments. To my knowledge, these arguments have never been advanced before, even though a large number of claims for reimbursement by the Postal Service have been made. The Postal Service argues, first, that, Under Article XV, Section 4-A(6), an arbitrator has no right to alter, amend or modify the National Agreement. The Postal Service contends that if this Arbitrator should sustain this grievance, he will have altered or amended the National Agreement by increasing Grievant's leave benefits beyond those to which she is contractually entitled.

The second argument advanced by the Postal Service is that the Postal Service issued no letter of demand to Grievant. It merely made a bookkeeping change reflecting her correct leave balance. Therefore, according to the Postal Service, Article XXVIII (Employer Claims) does not apply, and the Postal Service is not required to follow any of the rules or regulations set forth therein.

The first contention of the Postal Service - that the Arbitrator would be rewriting the National Agreement by permitting Grievant to keep the excess leave - can be answered by citing Section 437.1 of the Employee & Labor Relations Manual, which establishes procedures by which an employee may request a waiver of claim by the Postal Service for recovery of pay which was erroneously paid. It is therefore apparent that, although an employee may have been paid too much, there are circumstances under which the employee may keep the excess pay. Therefore, when an arbitrator states that an employee may keep the excess pay, he is not altering, amending or modifying the National Agreement by giving the employee more pay than the National Agreement provides, but he is, in fact, following the regulations set forth in the Employee & Labor Relations Manual.

As to the second argument of the Postal Service, Section 437.2 of the Employee & Labor Relations Manual defines "pay" as "salary, wages, or compensation for services, including all forms of premium pay, holiday pay, or shift differentials, payment for leave, whether accumulated, accrued, or advanced, and severance pay". Therefore, the excess leave which the Postal Service seeks to recapture comes under the definition of "pay" as set out in Section 437.2, and that, "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 therefor", as

set out in Article XXVIII of the National Agreement.

It could well be argued that under Article XXVIII, Employer Claims, the Postal Service has no right to seek repayment of the leave because, under that Article, in Section 1, the Postal Service may seek recovery only for a shortage in fixed credits or vending credits. Under Section 2 of said Article, it may seek recovery for loss or damage of the mails, and under Section 3 thereof, it may seek recovery for damage to Postal Service property and vehicles. Excess leave does not fall into any of these categories, and it might therefore be argued that the Postal Service has no right to recapture excess leave.

However, the purpose of Article XXVIII basically is to contemplate a way for the parties to settle claims between them. While all of the excess leave is not sought as a monetary amount, the excess leave could be converted to dollars, and a claim made for that amount. In this grievance, the Postal Service has devised a short method of recapture of an overpayment of excess leave. This method could be changed to a technical compliance with Article XXVIII if the Postal Service reduced the amount of annual leave overpayment to dollars and cents and then issued a letter of demand.

The Postal Service's argument that, since no letter of demand was issued Grievant is not entitled to a claim of waiver, could also be argued from the opposite point of view under

Article XXVIII; that is, since no letter of demand was made, the Postal Service cannot seek anything from Grievant because a letter of demand must precede a claim. Article XXVIII states that, in advance of any money demand upon an employee, the employee must be informed in writing and the reasons set forth. This indicates that every demand by the Postal Service upon an employee must be preceded by a written demand.

For the sake of argument, however, let us say that the change in Grievant's pay accounting could be considered as a form of letter of demand. I will therefore treat this situation as if the usual letter of demand had been issued to the employee.

In considering the evidence on the merits, it is my finding that Grievant has satisfied the criteria which would entitle her to a waiver of the claim.

There is no question that the error was originally made by the Postal Service. There is also no question that Grievant was not guilty of fraud, misrepresentation, or the like.

The only issue remaining, then, is: Should Grievant have realized the error in time to have avoided the problem?

Her explanation is not unreasonable. She was wrong in her understanding of when her leave status change would take effect, but her judgment was not so irrational or immoderate that it could be said that it was unreasonable for her to have reached such a conclusion.

The grievance is sustained, and the costs are assessed
equally.

Dated this 24th day of February, 1982.

Gerald Cohen

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