

C# 859

An Arbitration in the Matter of:
THE UNITED STATES POSTAL SERVICE
and
AMERICAN POSTAL WORKERS UNION

GRIEVANCE NO. AB-E-4810

FRANK SCIULLO
PITTSBURGH, PENNSYLVANIA

ISSUED: June 29, 1978

THE GRIEVANCE

In this grievance the Union protests the action of the Postal Service when it attempted to recover from the Grievant \$1,424.50 in Optional Insurance premiums which it had, in error, failed to deduct from the Grievant's pay over a six-year period.

BACKGROUND

In February, 1968, the Post Office Department offered, to its employees, Optional Life Insurance coverage in the flat amount of ten thousand dollars. This insurance was in addition to the basic coverage then in effect. All employees were offered the benefit without a physical examination provided that they applied within a period of ninety days from the initial date of offering. It appears that, at that time, regular life insurance and the new optional coverage were fully contributory.

In order for an employee to elect to be covered by the optional insurance, it was necessary that he complete and sign Standard Form No. 176-T^{1/}, "Election, Declination, or Waiver of Life Insurance Coverage." The Form is relatively simple and can be easily executed and understood. It contains a Box "A" which has beside it the following narrative:

**"ELECTION OF OPTIONAL (IN ADDITION TO REGULAR)
INSURANCE**

I elect the \$10,000 additional optional insurance and authorize the required deductions from my salary, compensation, or annuity to pay the full cost of the optional insurance. This optional insurance is in addition to my regular insurance."

On February 15, 1968, the Grievant's Supervisor provided him with a Form 176-T. He marked an "X" in Box "A" and signed it. There is no dispute that it was received in the Pittsburgh, Pennsylvania Post Office Personnel Section on February 16, 1968 which sets that date as the effective date of the additional coverage. The effective date of the increased payroll deduction was the "1st day of the 1st pay period beginning on or after the date of receipt."

The Union produced the Grievant's pay stubs for several pay periods immediately before February 16, 1968 and for twenty-two pay

^{1/}All employees were required to complete a Form 176-T whether or not they elected the optional insurance. If an employee did not file a Form 176-T, it was filed on his behalf by the Post Office. In that event, previous declinations of regular coverage were nullified and he was deemed to have declined only the new optional coverage.

periods immediately after that date. Life insurance deductions are listed in a column on the stub entitled "LIFE INS." Following is a Table containing pertinent information on the pay stubs for the period surrounding February 16, 1968:

<u>PAY PERIOD ENDING</u>	<u>LIFE INS. DEDUCTION</u>
1/12/68	\$2.00
1/26/68	2.00
2/09/68	2.00
2/23/68	2.00
3/08/68*	2.75
3/22/68	2.75
4/05/68	2.75

*Pay period in which first optional life insurance premium would have been deducted from Grievant's pay.

Sometime prior to May, 1973, the Grievant approached the Supervisor of Personnel to inquire about his optional life insurance coverage. His testimony on that score is as follows:

- "Q. And who did you contact with the Postal Service?
- A. I contacted Mr. DuShaw.
- Q. Where did Mr. DuShaw work?
- A. He's in Personnel and he was in charge of insurances.
- Q. And since that time, has Mr. DuShaw retired?
- A. Yes, he has.
- Q. And what was the substance of your conversation with Mr. DuShaw?
- A. I wanted to know if I had the optional insurance.
- Q. And why did you make that inquiry?
- A. I was assuming that the increase was probably for that purpose.

- Q. What did Mr. DuShaw tell you?
- A. He told me that if I filed that form for the optional insurance, I was covered.
- Q. Just to refresh my recollection of that, you say he told you that if you filed that form that you were covered?
- A. Right.
- Q. But did he say anything to you about whether or not management was taking care of that form?
- A. He said don't worry about it because they would take care of it. Yes, they had taken care of everything. That's what he said."

At that point, it was discovered that the Pittsburgh Post Office did not send a duplicate of the Grievant's Form 176-T to the proper office which would have caused an appropriate deduction to be made. Instead, both copies of the Form remained in the Grievant's personnel folder. The Pittsburgh Post Office then dispatched the following letter to the Postal Date Center:

" July 9, 1973

Postal Data Center
Personnel and Performance Branch
Atlanta, Georgia, 30335

A phone call was received from Frank D. Sciullo, SS# 210-10-0851 concerning optional insurance. In checking his personnel folder, we find two copies of Form 176-T, dated 2-16-68, when he

accepted optional insurance. It is apparent that your office was never notified during that open season that he exercised an option to request optional life insurance.

Under the present instructions he wants to continue both regular and optional insurance. His DOB is 03-25-17, which makes him ineligible now. If the previous application is honored, he would be indebted for five years payment of optional insurance or approximately \$700.00 or more. The employee failed to make an inquiry after signing of Form 176-T that no deductions were being made for the additional insurance until this time.

What options does he have to continue both types of life insurance?

Must he pay for the coverage from 2-16-68 until the present time if the former application is accepted? Advise the amount due and in what manner can he make repayment.

/s/

E. W. Cummins
Officer in Charge"

The Postal Data Center responded stating that the Grievant was overpaid in the amount of \$1,424.50 during the period February 24, 1968 through February 15, 1974^{2/} according to the following schedule:

55 pay periods @ \$ 6.00	(\$ 330.00)
46 pay periods @ 5.50	(\$ 253.00)
39 pay periods @ 17.00	(\$ 663.00)
17 pay periods @ 10.50	(\$ 178.50)
	<u>(\$1,424.50)</u>

^{2/} There is nothing in evidence that establishes this as an appropriate period. However, it can be assumed that proper payroll deductions were made after this period since, in 1976, the Grievant took formal steps to drop the optional coverage.

On May 30, 1974, the Grievant submitted Form 3074, "Request For Waiver of Claim For Erroneous Payment of Pay." Pertinent parts of Form 3074 are:

"10. DID YOU INQUIRE OF YOUR SUPERVISOR CONCERNING POSSIBLE ERROR IN YOUR PAY? IF SO, FURNISH DETAILS.

I made an inquiry on this matter over a year ago, but received no action.

I made another inquiry on March 1974 after Higher Insurance Deductions were shown.

11. STATE THE CIRCUMSTANCES YOU FEEL JUSTIFY WAIVER OF THIS CLAIM.

I feel that the finance office should have deducted this optional insurance, since I was told at the time I signed for it that all I had to do was to sign for it.

I was in error too in not checking it over when the optional insurance went into effect 2/24/68.

Insurance deductions changed from \$2.00 in 1968 to \$2.75, 3/8/68."

The request was denied on November 20, 1974 and the Grievant was advised by a letter dated November 22, 1974 that he should make arrangements to liquidate the indebtedness. The Grievant made such arrangements and, at the time of the Arbitration, he had repaid \$976.00. Sometime in 1976 the Grievant dropped the optional insurance coverage.

CONTENTIONS

The Union argues that the Grievant was not at fault here and that the error was Management's. It says that he properly concluded that an appropriate deduction was made to encompass the new benefit when his life insurance deduction went from \$2.00 per pay period to \$2.75 in the pay period ending March 8, 1968. The Union says that the Grievant was not covered by the optional insurance since the proper deduction was not made from his pay.

The Union claims that the application was not perfected and, therefore, it was void. It claims that, even though the Grievant desired to be covered and executed Form 176-T, the Form did not leave the Pittsburgh Post Office which the Union maintains is necessary for the process to be completed and coverage effectuated. The Union argues that the United States Postal Service lost nothing since it did not purchase ten thousand dollars worth of life insurance for the Grievant. It says that, therefore, any repayment would enrich the USPS at the Grievant's expense.

The Union argues further a Peabody-Gallion IAM^{3/} Decision wherein the Arbitrator quoted still another Arbitrator^{4/} on the subject of erroneous overpayment; to wit: "The present dispute was caused by (an) unilateral mistake of fact made by an agent of the Company. Where one

^{3/} Peabody-Gallion Corporation 63 LA 144

^{4/} Nichols-Bakery, Inc. 33 LA 564

of two innocent parties must suffer, he who caused the error must bear its unfortunate consequences." It says that this Grievant is similarly situated to the Grievants in that case and that the Grievant suffers a hardship created by an error of Management when he is required to pay the accumulated optional life insurance premiums.

Finally, the Union says that the error was made known to the Postal Service prior to May 30, 1973 and no action was taken and that, since the Grievant terminated the coverage in 1976, this demonstrates, "that coverage never existed."

The Postal Service argues that the Union has advanced no provision of the National Agreement which it claims has been violated by Management. Under these circumstances, says the Service, the Arbitrator has no jurisdiction in this case. In any event, claims the Postal Service, the Grievant was covered by the optional life insurance when the Personnel Department received the signed copies of the Grievant's Form 176-T. It does not matter, argues the Service, that the administrative mechanisms broke down in this case for, had the Grievant died, his estate would have been paid the benefit. It says that, since the Grievant enjoyed the benefit, he is obliged to pay the premiums which were not deducted due to administrative error.

Finally, the Postal Service says that it has the right to recover overpayments to its employees and cites Section 462.11 of the F-16 Fiscal Handbook which states:

"The Postal Service may collect an overpayment, erroneous, or improper payment made by the Postal Service, by deducting installments from employees' current pay."

It says that this case represents an overpayment of wages and, under Section 462.11, the Postal Service has the right to recover the overpayment "by deducting installments from his current pay."

FINDINGS

There is no dispute that the Grievant intended to take advantage of the opportunity to purchase optional life insurance when it was first offered to him in February, 1968. The ten thousand dollar face amount of the insurance was in addition to and in excess of the eight thousand regular life insurance which he was entitled to carry by virtue of his employment with the Post Office Department. He properly executed the necessary Form 176-T and it was duly received in the Pittsburgh Post Office Personnel Department. The Grievant says that he did not know the cost of the new benefit and assumed that the simultaneous increase of seventy-five cents in his regular insurance deduction covered the increased amount of insurance.

The argument of the Postal Service, that since there is no recoupment clause in the National Agreement a grievance cannot be properly brought to Arbitration, is without merit. While no such clause that specifically goes to this issue exists, the payment of wages is covered in Article IX. Improprieties in the payment of wages can be said to fall within the purview of this Article.

Finally, the Postal Service relied on certain Handbooks and Manuals to advance its claim. Certainly, a proper defense could be a claimed inappropriate interpretation of those Handbooks and Manuals as folded into the National Agreement in Article XIX. The grievance, then, is appropriately in this Arbitration.

The Grievant attempted to determine his status in regard to his coverage. It is clear that Pittsburgh Post Office officials could not give him the answer, hence the Cummings letter to the Atlanta Data Center.

The Pittsburgh Post Office does not pay benefits and could not, with finality, advise the Grievant that he was covered. It is the Data Center that determines whether or not an employee is covered and makes insurance payments to beneficiaries. The Data Center never received the Grievant's Form 176-T. Consequently, it did not make the proper payroll deductions. Without that basic transaction, as far as the Data Center was concerned, the Grievant was not covered.

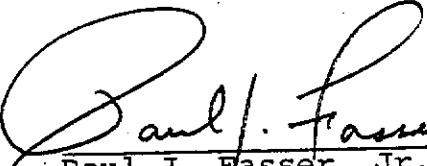
Furthermore, there is no doubt that a question would have been raised concerning the Grievant's coverage had he died. There certainly would have been no automatic payment since the Data Center did not know that the Grievant had signed a Form 176-T in 1968. In addition, it is doubtful that the Data Center would have honored the Form 176-T inasmuch as no premiums had been deducted. At the very minimum, the beneficiaries would be required to make a special request of the Postal Service for the benefit, if, indeed, they were aware of it. Relying on the magnanimity of whoever processed the Form 50 at the employee's

death is too tenuous a situation where dollar amounts of this magnitude are concerned and it is possible that the beneficiaries would be faced with expensive, protracted and potentially unsuccessful litigation in order to obtain payment.

Under these circumstances, it cannot be found that the Grievant was covered by the Optional Life Insurance Benefit and there should be no further recoupment. In addition, monies already recouped should be returned to the Grievant.

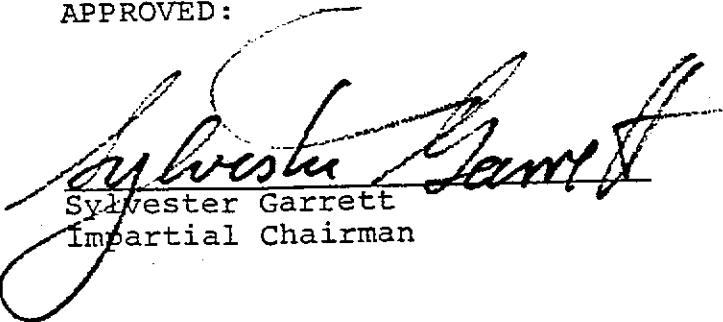
AWARD

The grievance is sustained. No further attempts shall be made at recoupment and monies already recouped are to be repaid to the Grievant.



Paul J. Fasser, Jr.
Associate Impartial Chairman

APPROVED:



Sylvester Garrett
Impartial Chairman