

OPINION AND AWARD

1377 (CIC-4T-C)

C 278

THE UNITED STATES POSTAL SERVICE

Case No. C1C-4T-C 1377

-and-

APWU Reg. No. 1 CIC 180
Local No. 10681-1

THE AMERICAN POSTAL WORKER'S UNION
Corbin, Kentucky

The hearing was held at the Public Library, 303 East Center, Corbin, Kentucky on Thursday, August 5, 1982 beginning at 9:00 a.m.

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APPEARANCES

For the Employer:

Michael P. Jordan, Labor Relations Specialist
Harold K. Adkins, Msc. Manager Operations, Corbin
Dennis D. Brewer, Postmaster, London, Kentucky

For the Union:

Barry L. Marshall, Advocate
Gary Fox, Witness

GRIEVANCE:

"G. Fox was in the process of documenting a maximazation grievance. There were a total of 19 employees time cards and schedules to document. Information was not in order or complete. This took considerable amount of extra time. As of 9-29-81 Fox had used approximately 21 hours. On that date, D. D. Brewer (Manager of Fox) sent word by J. Anderson (Supr) that Fox's time was out. The Union feels 21 hrs. is not a reasonable amount of time to complete this documentation."

"Corrective Action Requested: That Fox be allowed to resume his documenting immediately with time to complete this grievance. Also that Fox be allowed to complete this on a schedule change to speed up this task which he has been so purposely delayed, (signed) Gary K. Fox, President"

ANSWER:

"Dear Mr. Fox:
The subject Step 2-A Grievance was discussed with you on October 29, 1981, in accordance with Article XV, Section 3 of the 1978 National Agreement.

The grievance is denied for the following reasons:

You were allowed twenty-one hours on the clock to research the records. Based on past experience, this would be adequate time to research the records in which you were interested. (signed) H.W. Roaden, MSC Manager, Corbin, KY 40701"

ESSENTIAL FACTS:

On July 17, 1981 Union Steward Gary Fox requested local management for the time cards, leave slips and schedules for the Part Time Flexible Employees assigned to or loaned to the Corbin, Kentucky, Post Office for the period December 18, 1980 to July 17, 1981 to investigate a possible grievance involving the maximization of regular employees in the Corbin office. Not having heard anything, on July 24, 1981, Mr. Fox inquired as to the status of the request. He was told that he would be notified what information he would get, and 6 days later, on July 30, 1981, he had not received the information, so he filed a Step 1 grievance. This grievance was settled on August 4, 1981, at Step 1 with the understanding that he would get the documentation requested and would be given one hour per day for the purpose of investigating the possible grievance. At that time, no total number of hours were stipulated.

He was given copies of the schedules for his research but found it necessary to request time cards. Each day he worked on his investigation, he spent time going to the time card custodian and getting the time cards. These time cards had to be arranged in chronological order since each day's hours are recorded on separate sheets. He found the time cards in disarray so he spent part of his hour sorting the time cards. The investigation required inquiry as to whether a part-time flexible employee when working, was working for himself or herself, or was replacing a regular employee who was on leave. The time cards and schedules must be used together. Since the schedules were incomplete, Mr. Fox went to the supervisor many times to find out whether a part-time flexible was actually working for himself or replacing a regular. This work, too, had to be done during the hour given for that day. Additional time was spent finding a space to work, getting the needed supplies and filling out Postal Service forms.

From August 4, 1981 to September 29, 1981, he was allowed 21 hours, or one hour per day on 5 days or 8 hours on two other days. He did not get the one hour each day as there were a total of 40 possible work days during the period. On September 29, 1981, he was told that he would not be given any further time on the research since 21 hours was enough time.

The Grievant estimated that he actually used only 30-45 minutes of each of the hours in going over the material. When he was denied additional time,

he had completed about one-third of the work. Mr. Fox has served as President, Vice President and Steward in the Union.

Introduced into evidence before the Arbitrator were graphs the Grievant made when he had completed his investigation for the stated period. He conceded on cross-examination that he did not find any employees who met the required standards. Twenty-six time cards had to be checked for each employee, and he would complete 2 employees a day. He explained that in Corbin, in the past, more than one part-time flexible had been used on a given day.

In argument, the Union urged that the Grievant's request was not unreasonable and emphasized that the time cards were out of order, the schedules were not complete, and certain preparatory time such as walking to the time card custodian and to the location of the room where he worked all cut into his actual work time. It was further urged that the volume of work was very heavy. He had to prepare a graph for each part-time flexible over a six month period. There were 19 part-time flexibles, 13 pay periods, 182 calendar days, so 182 graphs or 3,448 entries. Required would be 164 entries an hour for 21 hours or 2.7 entries a minute, and that was assuming that everything was in order. Further, it was said that at no time during the 21 hours was he doing anything else or was he told that he was using too much time. Management arbitrarily cancelled his time.

The employer urged that the Grievant's demand was unreasonable, and the right that he was exercising could not go unfettered. It was claimed that one hour should have given him the information. Actually, it was argued, only 12 part-time flexibles were involved, and the analysis that the Grievant made was unnecessary. The time spent was inordinate. Involved really were 52 time cards for 312 entries in 6 days. With 480 minutes, there are $1\frac{1}{2}$ minutes allowable for each entry. In effect, it was reasoned, the Grievant did that which he didn't need to do, citing that he did not have to check the schedules since he had to go to the time cards anyway.

CONTRACT PROVISIONS CITED:

ARTICLE XVII - REPRESENTATION

Section 3. Rights of Stewards. When it is necessary for a steward to leave his/her work area to investigate and adjust grievances or to investigate a specific problem to determine whether to file a grievance, the steward shall request permission from the immediate supervisor, and such request shall not be unreasonably denied. In the event the duties required, the steward leave the work area and enter another area within the installation or post office, the steward must also receive permission from the supervisor from the work area he/she wishes to enter and such request shall not be unreasonably denied.

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.

While serving as a steward or chief steward, an employee may not be involuntarily transferred to another tour, to another station or branch of the particular post office or to another independent post office or installation unless there is no job for which the employee is qualified on such tour, or in such station or branch, or post office. If an employee requests a steward or Union representative to be present during the course of an interrogation by the Inspection Service, such request will be granted. All polygraph tests will continue to be on a voluntary basis.

Section 4. Payment of Stewards. The Employer will authorize payment only under the following conditions:

Steps 1 and 2 - The aggrieved and one Union steward (only as permitted under the formula in Section 2A) for time actually spent in grievance handling, including investigation and meetings with the Employer. The Employer will also compensate a steward for the time reasonably necessary to write a grievance. In addition, the Employer will compensate any witnesses for time required to attend a Step 2 meeting.

Meetings called by the Employer for information exchange and other conditions designated by the Employer concerning contract application.

Employer authorized payment as outlined above will be granted at the applicable straight time rate, providing the time spent is a part of the employee's or steward's (only as provided for under the formula in Section 2A) regular work day.

ARTICLE VII - EMPLOYEE CLASSIFICATIONS

Section 2. Employment and Work Assignments

A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility,

management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken:

1. All available work within each separate craft by tour has been combined.
2. Work of different crafts in the same wage level by tour has been combined.

The appropriate representatives of the affected Unions will be informed in advance of the reasons for establishing the combination full-time assignments within different crafts in accordance with this Article.

B. In the event of insufficient work on any particular day or days in a full-time or part-time employee's own scheduled assignment, management may assign the employee to any available work in the same wage level for which the employee is qualified, consistent with the employees' knowledge and experience, in order to maintain the number of work hours of the employees' basic work schedule.

C. During exceptionally heavy workload periods for one occupational group, employees in an occupational group experiencing a light workload period may be assigned to work in the same wage level, commensurate with their capabilities, to the heavy workload area for such time as management determines necessary.

Section 3. Employee Complements. The Employer shall staff all postal installations which have 200 or more man years of employment in the regular work force as of the date of this Agreement with 90% full-time employees. The Employer shall maximize the number of full-times and minimize the number of part-time employees who have no fixed work schedules in all postal installations. A part-time flexible employee working eight (8) hours within ten (10), on the same five (5) days each week and the same assignment over a six-month period will demonstrate the need for converting the assignment to a full-time position. Where a count and inspection of an auxiliary city delivery assignment indicates that conversion to a full-time position is in order, conversion will be made.

DISCUSSION:

Article XVII - Representation, sets forth the rights of stewards in the investigation and adjustment of grievances. In the collective bargaining process, the steward occupies an important position and serves a vital function. Understandably, the parties have set forth with some particularity what the rights of the steward are. Grievances cannot be adjusted fairly and promptly unless there is timely and full investigation so that the total facts may be marshalled for presentation. In the long view, the proper exercise of the functions of the steward conduces to the welfare of the employer since it is part of the mechanism for getting rid of uncertainty and doubt and

bringing to a problem or potential problem the essential facts requisite for solution. Involved in this case, of course, is an investigation to determine whether or not there is a grievance.

Here the key consideration is that of reasonableness - whether the Grievant needed all the time that he used or whether he needs additional time to complete his investigation. Admittedly, there will be differences between and among persons in their investigating methods and techniques. Contract protection is not intended to serve as a vehicle for unnecessary, protracted investigation, nor can the right be curtailed or in effect defeated by a standard imposed by management, whose representative might use a more effective and speedy methodology in investigation. In many instances, as here, management knows what the investigation of the steward would likely reveal or not reveal, and it is understandable if management was perplexed by the time that the Grievant was taking to find out what was already known to them.

On the basis of that which was received in evidence and delineated by representatives of the parties, the Arbitrator is of the opinion that 63 hours total for the completion of the investigation would be clearly unreasonable and excessive. The denial of a total of 63 hours would not be an unreasonable denial. But the posture of the case is an investigation that was started and was not completed. The Grievant might well employ less time-consuming and efficient methods to complete his investigation, and it is possible that the arbitration itself has provided the Grievant with some insight that he did not have before the hearing. The investigation should be completed, and the Grievant should be given an opportunity to obtain that information which he needs and a reasonable time for review of that information. The summary denial of any additional time to the Grievant, not only before he had completed his investigation, but also before there was any careful attempt to find out from him what problems he was encountering and, too, without prior notice to him that he was going to be denied additional time, was unreasonable. Accordingly, the Grievant shall be given an additional 9 hours to complete his investigation. It will be left to the parties as to how the 9 hours will be granted; on the basis of that which was offered before him, the Arbitrator is of the opinion that one hour a day is patently an inefficient method.

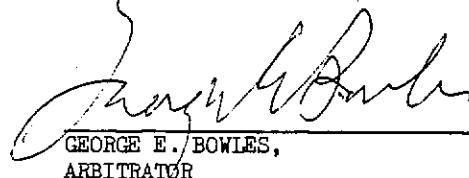
A W A R D

ISSUE:

Was the Grievant, Gary Fox, unreasonably denied permission from his supervisor to review documents, files and other records necessary for determining if a grievance exists?

ANSWER:

Yes. The claim of the Grievant that he needs a total of 63 hours for such an investigation was not supported by the evidence, and such a period would be clearly excessive. He is entitled to additional time for completion of the investigation. He shall be granted an additional 9 hours for completion of such investigation, and the arrangements for his leaving his work area for such investigation to obtain and study pertinent records will be left to the parties.



GEORGE E. BOWLES,
ARBITRATOR

Date of Award: August 16, 1982