

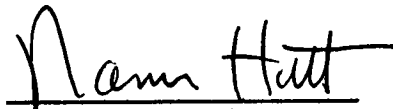
C-26617

REGULAR ARBITRATION PANEL

)	GRIEVANT: Class Action
)	
UNITED STATES POSTAL SERVICE)	POST OFFICE: Huntington Beach, CA
)	
and)	CASE NO. F01N-4F-C 0516737 (05161737)
)	
NATIONAL ASSOCIATION OF)	
)	NALC DRT NO: 01-052243
LETTER CARRIERS, AFL-CIO)	
)	
)	

APPEARANCES:	Postal Service:	Carol A. Cook
	Union:	Charles Pinckney
PLACE OF HEARING:		Huntington Beach, California
DATE OF HEARING:		May 2, 2006
CONTRACT YEAR:		2001 - 2006
TYPE OF GRIEVANCE:		Remedy
DATE OF AWARD:		June 27, 2006

AWARD: The remedy for repeated violations of Article 31 of the National Agreement: The Service is directed to cease and desist from violating Article 31 and to comply with the settlement agreements contained in the record. The Service is directed to pay the Local Branch \$1000.00 within 30 days of the date of this award.


Nancy Hutt, Arbitrator

RECEIVED

JUL 27 2006

VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS

I.

INTRODUCTION

As parties to a collective bargaining agreement, the Union and Postal Service submitted this matter to arbitration after completion of the pre-arbitral process. Both parties were afforded a full opportunity to present evidence and argument and to examine and cross-examine witnesses. However, the advocates mutually decided to submit the record for decision after making opening arguments. The record consists of Joint exhibits and awards submitted by both parties.

II.

ISSUES

The parties gave the arbitrator authority to frame the issue.
What is the appropriate remedy for the repeated violations of the National Agreement?

III.

STIPULATIONS

The Dispute Resolution Team (DRT) resolved the portion of the grievance as it relates to the contractual violation in the following manner:

The Employer violated the National Agreement by their failure to timely provide the Union the requested information as previously agreed. Management is instructed to cease and desist future violations of this nature.

The DRT declared an impasse on the matter of the remedy.

IV.

FACTS AND CONTENTIONS

This grievance arose following the Union's request for information and the delay of that information. The specific facts are not before me regarding the underlying grievance in that the DRT addressed the merits of the grievance and found a violation.

The Union contends the settlements listed below are final and binding agreements between the parties and Article 15 mandates the good faith observance of these settlements. The blatant and continuous violations of the contract and the non-compliance with the cease and desist orders have a harmful affect on the Union in numerous ways. The general expense of litigating the denial and delay of information is costly and the poor relationship between the parties impacts the speedy resolution of issues. According to the Union a monetary remedy is appropriate because the Huntington Post Office has a long history of similar violations and persists in violating the collective bargaining agreement regardless of the prior mandates.

The Service specifically argues that the arbitrator has the authority to provide a monetary remedy, but that the remedy should be equal to the economic harm suffered as a result of the violation. A punitive monetary remedy, the Service asserts, is not provided for in the National Agreement and therefore the monetary remedy must be limited to compensatory damages. The Service provides numerous awards which indicate a monetary award is not appropriate when the Union has made no showing of demonstrable harm. The Service requests and I quote, from their written position: "Management has already made the grievants cited in the instant grievance whole. According to the

previous grievance settlements, the Article 8 violation involved a grand total of 1.06 hours (approximately \$30.00). The union is requesting punitive damages of an additional \$3000.00. Management, in good faith, has completed the required paperwork to pay the 6 grievants an additional \$150.00 each. As argued in today's hearing, the delay was not intentional or deliberate." In light of the facts in this record the Service argues the Union's request is unreasonable as the delay was not a deliberate violation of the contract.

Joint 2 contains resolutions and/or settlements between the Huntington Beach Post Office and NALC Branch 1100 concerning the denial of information. These are set forth below:

1. Without prejudice to either party the grievance is settled as follows: Non-precedent setting, management will not arbitrarily deny the union requested information. By no way does this settlement wave the unions rights to increase monetary remedies for future delaying and or denying information request. (Resolved, 6/29/05) Joint 2, p. 16.
2. Labor Management Intervention Meeting, 4/22/04: Management and Union agreed to the following: "The OIC assured that information that was readily available would be given to the union within 24 hours of receipt of the request, if not received the union will notify OIC/Postmaster and she/he will intervene. In the event that part or all of the information is unavailable, management will inform the Steward of the status." Joint 2, p. 17.
3. Prearbitration settlement: Management shall cease and desist from future violations and is directed to pay to the local union steward the lump sum amount of \$250.00. Future requests for information shall be provided to the union in accordance with Article 17 and 31 of the National Agreement. Management shall respond to the questions and to requests for documents in a cooperative and timely manner. When a relevant request is made, management should provide for the review and/or produce the requested documentation as soon as reasonably possible. This agreement constitutes a full and final settlement of all issues and disputes pertaining to the grievance and is considered precedent setting.... (Settled, 8/24/04) Joint 2, p. 18.

4. Prearbitration settlement: Management shall cease and desist from future violations and is directed to pay a one time lump sum amount of \$500.00 to be distributed equally among the following letter carriers: [4 named carriers] This agreement constitutes a full and final settlement of all issues and disputes pertaining to the grievance and is considered precedent setting.... (Settled, 8/24/04) Joint 2, p. 20.
5. Settlement: Information request delayed, adhere to previous pre-arb and local decisions regarding union requests for information. Further incidents will result in the Union seeking monetary remedies per... (Settled 1/13/05) Joint 2, p. 19
6. Settlement: That management will cease and desist denial of information and if any further violations occur a monetary remedy will be considered. (Settled 7/11/03) Joint 2, p. 24.
7. Settlement: Cease and desist denial or delay of information (4/15/03) Joint 2, p. 26.
8. Settlement: Cease and desist denial or delay of information (12/20/02) Joint 2, p. 30.

As a remedy, the Union seeks an order directing the Post Office to abide by the prior settlements and a monetary award in the amount of \$500.00 dollars for each of the carriers listed in the appeal of the Union.

V.

DISCUSSION

The National Agreement requires the Service to provide information when reasonably requested pursuant to Article 31. The procedure benefits the Union and management. First, it permits the Union to determine that, in fact, no grievance exists and secondly, the parties can resolve the matter at the lowest possible level. When management delays the information reasonably requested the delay hinders and obstructs the grievance resolution process. Moreover, as the Union argued and I agree, repeated

delays or denials not only harm the relationship between the parties, but impact the financial resources of the Union.

The settlements contained in Joint 2 illustrate repeated difficulties with information requests. Clearly, and as argued by the Service, I do not have the facts behind the settlements contained in Joint 2 to determine if the circumstances are the same or similar. However, the documentation demonstrates a history of information delays and/or denials have been problematical at the Huntington Post Office for several years, which indicate that management is disregarding, at times, the contracted rights of the Union. Perhaps in the instant case the conduct was not egregious, as evidenced by the limited facts contained in the record, but the violation itself is part of a continuation of such conduct and not an isolated incident.

Without acknowledging a monetary award under the circumstances is appropriate, the Service offered \$150.00 to each of the grievants for the delay in providing the information. It appears the grievants were made whole and are not due any compensatory damages. However, as the various cease and desist orders and settlements have only been minimally effective in changing the atmosphere and conduct concerning information requests, it is appropriate to compensate the Local Union for the economic hardship in having to repeatedly pursue this issue which has persisted for a sustained period of time. Thus, a monetary remedy is awarded.


//

//

VI.

AWARD

The remedy for repeated violations of Article 31 in the National Agreement: The Service is directed to cease and desist from violating Article 31 and to comply with the settlement agreements contained in the record. The Service is directed to pay the Local Branch \$1000.00 within 30 days of the date of this award.


Nancy Hutt, Arbitrator

**DATED: June 27, 2006
San Francisco, CA**