

C#10835

REGULAR REGIONAL ARBITRATION PANEL

ARBITRATION IN THE MATTER OF

United States Postal Service,	]	Grievant:	Class Actions
	]		
Employer,	]	Post Office:	Alpharetta,
	]		Georgia
and	]		
	]	USPS Case Nos:	S7C-3E-C 27197
American Postal Workers	]		S7C-3E-C 27467
Union, AFL-CIO,	]		S7C-3E-C 27537
	]		S7C-3E-C 27541
	]		
Union.	]		

BEFORE ARBITRATOR PATRICK HARDIN

APPEARANCES:

For the United States Postal Service:

Roy D. Dowden  
Labor Relations Assistant

For the American Postal Workers Union:

Sebastian Guarisco  
National Business Agent


HEARD: June 28, 1990

AT: Alpharetta, Georgia

AWARD:

Management unreasonably denied requests by the Union steward for time to consult grievants and process grievances; accordingly the grievances are allowed in part. Steward Danny Hendrix shall be reimbursed at the straight time rate for the 7.5 hours during which he conducted Union business on approved LWOP.

DONE this 2nd day of November, 1990, at Knoxville, Tennessee.

  
Patrick Hardin, Arbitrator

## HEARING

This matter was heard by the arbitrator on June 28, 1990, at Alpharetta, Georgia. The parties appeared as shown above and were afforded full opportunity to present evidence and argument. At the conclusion of the hearing the parties waived closing argument and agreed to submit and exchange post-hearing briefs. The arbitrator took the matter under consideration on August 30, 1990, when the briefs of the parties were received.

## ISSUE SUBMITTED

The parties did not agree on any formal statement of the issue submitted for resolution. After considering the evidence and argument of the parties, and the prior awards upon which they rely, the arbitrator deems the issue to be:

Did the Postal Service violate Article 17 of the National Agreement by denying steward Danny Hendrix's requests for time to confer with employees and process grievances? If so, what is the proper remedy?

## RELEVANT CONTRACT PROVISIONS

Articles 3, 15, 16, and 17 of the National Agreement between the parties are pertinent to the resolution of this dispute.

## FACTS

These four grievances arose in the Alpharetta, Georgia, Post Office and were presented at Step One between December 16, 1989, and February 13, 1990. They reflect a serious disagreement between the local Postal Service management and the local Union leadership over the release of a steward for the processing of

grievances. The steward, Mr. Danny Hendrix, was released for that purpose for at least some time on most of the days he worked during that period. He found the time allowed insufficient to perform all of the tasks he judged necessary, given the time limits within which he was expected to perform those tasks.

This summary of the Union's contentions in each grievance, and of Management's response as provided in its brief, reveals the full flavor of the dispute:

1. Case No. 27537, filed December 12, 1989.

Allegation: The grievance alleged that on December 5 Hendrix requested 5 hours to write 8 grievances, and requested an additional 3 hours on two following days. The supervisor agreed to release Hendrix on December 9 and 11 but did not do so. Hendrix was compelled to finish the processing on his own time.

Response: Management responds that Hendrix was released for 8 hours in the period from December 5 through 12, including 1.5 hours on December 9 and .5 hours on December 11. Management points out that it faced the Christmas season demands, and had agreed to extend the deadlines for processing all grievances in the office.

2. Case No. 27541, filed December 29, 1989.

Allegation: The grievance alleged that on December 16 Hendrix requested time to process 3 grievances for Step 2 because time requested on December 12 had not been granted, that the supervisor agreed to grant the time on December 18, but did not

do so. Hendrix was compelled to finish the processing on his own time.

Response: Management responds that Hendrix was released 5.5 hours for Union business in the period from December 12 through 16, still during the Christmas season, including some release time on every day he worked.

3. Case No. 27467, filed January 6, 1989.

Allegation: The grievance alleged that on January 2, Hendrix requested time to process 31 grievances, that time previously requested for that purpose had not been granted, and that the request was denied without any agreement on an alternate time. Hendrix eventually requested 8 hours of LWOP, of which 3 hours was granted, and he used that time to process the grievances.

Response: Management responds that Hendrix was released 4.5 hours for Union business in the period from December 20 through January 2, still during the Christmas season, including some release time on 4 of the 8 days he worked.

4. Case No. 27197, filed February 13, 1989.

Allegation: The grievance alleged that between February 7 and 12, Hendrix requested time to process grievances, and that the request was denied. Hendrix processed the grievances on his own time and demanded compensation for the time.

Response: Management responds that Hendrix was released 7.6, hours, including 2.5 hours of LWOP, for Union business in

the period from February 7 through 12, including some release time on every day he worked.

The parties were unable to resolve these matters in the grievance procedure, and they are now properly before the arbitrator for resolution.

#### POSITION OF THE UNION

The Union has established and proved that the refusal to allow Steward Hendrix release time was for reasons other than the urgent needs of Postal Service efficiency and such denial of Steward release time was unreasonable. Because of such unreasonable denial, Hendrix found it necessary to perform his duties off the clock and was, therefore, denied the right to do so in a paid status as provided in Article 17.4. Had it not been for the Employer's unreasonable denial of the requests, such time would have been during his regular day. Thus, he should be compensated for such time. Employees must be convinced that their grievances are being taken seriously and that the Postal Service is making every effort to provide an atmosphere where such grievances can be fairly and judiciously processed.

#### POSITION OF THE POSTAL SERVICE

The burden of proving, by a preponderance of the evidence, that Management unreasonably denied Hendrix time to handle Union business rests with the Union. It must demonstrate "unreasonableness" in the context of the individual circumstances controlling here, including:

- The reasons for the denials;

- The complexity and urgency of the grievances involved;
- The experience of the Steward; and
- The needs and the staffing requirements of the Service.

No evidence was introduced to show that Management acted capriciously or arbitrarily, or for bad motive. Management did not unreasonably deny the requests for release time, and the grievance should be denied.

#### ANALYSIS AND CONCLUSIONS

1. Right at the outset, the Postal Service argues that I should deny this grievance even if Management violated the Agreement by denying the requested release time, because I cannot grant the monetary relief the Union seeks. According to this argument, Article 17, Section 4, only authorizes payment to stewards for time spent on their "regular work day." Since Hendrix filed these grievances precisely to complain that he had to work on the grievances outside of his normal hours, it necessarily follows that the payment is not authorized under Section 17.4.

Taking the argument in its fullest form, I reject it. Section 17.4 prescribes the conditions in which Management must pay its employees who have performed steward duties. If it failed to pay in those prescribed circumstances, Management would violate the Agreement by the act of not paying. A grievance would be appropriate, and if the arbitrator determined that such a violation had occurred, the arbitrator could provide an appropriate remedy. Presumably the remedy would include the pay owed.

Nothing in the Agreement, however, would require that the remedy be confined entirely to such pay. The arbitrator might order additional remedial steps, in the exercise of her or his remedial power, to restore the parties fully and fairly to the situation that would have obtained if the Agreement had not been violated.

In this case, the issue is not whether the Postal Service has wrongfully withheld pay under Section 17.4. The issue is whether it unreasonably, and therefore wrongfully, withheld permission from Hendrix to attend to grievance chores during his regular work day. If it did so, Management violated Section 17.3 and the arbitrator has the usual authority to provide a remedy. Nothing in Section 17.4 restricts the normal power of the arbitrator to fashion and impose a remedy that fully and fairly redresses the violation. A monetary award to the steward to redress his losses, and to place the loss on the wrongdoer, is the normal and proper remedy. With all due respect to the several of my colleagues who have suggested, and to any who have applied, a different reading of the Section 17.4, there is just nothing in that Section which impairs the arbitrator's powers to provide a normal, expectable, remedy for a violation of Article 17. In this case, in any event, at least 7.5 hours of the work for which pay is claimed did take place during Hendrix's "regular work day" during times when he was on approved LWOP.

2. I have concluded that Mr. Hendrix should be compensated for the time he spent working grievances on approved leave without pay. For those 7.5 hours, the proof is conclusive that he

was not required by the needs of the service to be at his work station moving the mail. Management made the determination that he could be spared from those clerk duties to process grievances, if he would go off the clock. It would seem to follow that he could have been spared equally well to do the same thing on the clock.

The dispute in this case, as is clear from the record, is not about whether Hendrix could have been spared from his normal duties for those 7.5 hours during the period covered. It is perfectly clear that Management denied his requests for those hours because Management thought it had approved as much time as was justified for the grievance work at hand. That moved the dispute into a delicate area for both parties, but especially for Management.

Article 17.3 provides only that Management will not unreasonably deny the request for steward time. But Management might act reasonably in denying a request for either of two reasons: First, because the steward could not be released from his duties at the moment of the request without impairing the delivery of the mails, or second, because the request for release was, under all the circumstances, an unreasonable request. Manifestly, if the Union made a request for an unreasonable amount of time -- a week to investigate a letter of warning for a routine attendance infraction -- the denial of such a request would be reasonable within the meaning of 17.3.



But Management is not in the same position to judge the two situations. Management should know with a high degree of accuracy what its staffing needs are at any moment and are likely to be in the immediate future. Therefore, when Management delays the release of a steward and claims that the steward is needed at his case until the first class mail is sorted, Management is acting on familiar terrain. Unless it acts in blatant bad faith, its judgment will be difficult to challenge.

In the other case, however, the terrain is not so familiar to Management. When Management refuses to release a steward because it judges that he has already been given enough time to do the job, Management intrudes into an area where the judgment of the Union is entitled to great weight, and Management's judgment to less weight. The question, after all, is how much time and effort is enough for the Union to do its duty to those it represents. Moreover, when Management bases its denial on those grounds it lays its motives open to question. Does the denial of steward time reflect impatience with the slowness of the steward, or does it really reflect unhappiness about underlying grievances that it regards as frivolous, or nettlesome, or unwise.

These considerations explain, I believe, the evolution of arbitration precedent on this question. Arbitrators have been quickest to sustain Management's action in delaying or refusing release time for stewards when operational demands were given as the reason. Indeed, some arbitrators have suggested (wrongly, I believe) that work demands are the only basis on which Management

may properly deny a request for steward time. Be that as it might, most arbitrators have been less receptive to the other justification: that time enough had already been allotted. As my colleague Marlatt has observed in sustaining a grievance similar to this one, S4C-3T-C 23302 (Class Action, Amarillo, Texas, September 29, 1986), the smooth working of the grievance procedure depends on the availability of skilled people on both sides to give each grievance its individual due. Management employs a large and skilled labor relations staff for that purpose. The Union depends on its cadre of stewards, volunteers whom the Postal Service has promised to pay for their endeavour.

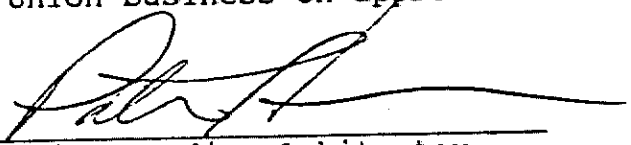
The arrangement is freighted with potential for friction and misunderstanding. A successful balance of the conflicts requires sensitivity by both parties. When, as here, Management comes to believe that an inexperienced steward is performing inefficiently, its legitimate options include serious discussions with the Union about solutions, including solutions that might require a period of extra effort and flexibility on both sides. Simply refusing to release a steward who can be spared from normal duties seems likely to make the matter worse rather than better in most situations, even if the steward really is inefficient.

The most important fact that emerged at the hearing was in the testimony of witnesses for both parties that since these grievances were filed, the conflict between the parties has largely been resolved. Release time for stewards is no longer a serious problem at the Alpharetta Post Office. That certainly

does not relieve me of my duty to say whether the Agreement was violated in these four cases. It does, however, caution me against proceeding in a fashion that will unnecessarily disturb an improving situation. Fairly viewed, the evidence of the Union showed conclusively that the denial of 7.5 hours of the requested release time was not based on operational needs or other reasonable criteria. To that extent, the grievances must be sustained. The remaining hours of pay claimed by the Union are not so well justified. The evidence left the issues ambiguous. Given that the requests for release time came during the Christmas season, and that the Postal Service had agreed to extensions in grievance deadlines, I conclude that the Union did not meet its burden of proving any violations other than the denial of the 7.5 hours of release time that was allowed as LWOP. To that extent, the grievances must be, and are, allowed.

#### AWARD

Management unreasonably denied requests by the Union steward for time to consult grievants and process grievances; accordingly the grievances are allowed in part. Steward Danny Hendrix shall be reimbursed at the straight time rate for the 7.5 hours during which he conducted Union business on approved LWOP.

  
Patrick Hardin, Arbitrator

Knoxville, Tennessee  
November 2, 1990

5.alpharet.arb