



REGULAR ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION) GRIEVANT: Class Action
(
between) POST OFFICE: Chatsworth, California
(
UNITED STATES POSTAL SERVICE) USPS Case No: F06N-4F-C 13022821
(
and) DRT No.: 01-256488
(NALC Case No: 12TV36CCHA
)
NATIONAL ASSOCIATION OF LETTER CARRIERS,)
AFL - CIO)

BEFORE: Ruben R. Armendariz, Arbitrator

APPEARANCES:

For the Postal Service:	Rene Anderson, Labor Relations Specialist
For the Union:	James D. Henry, Regional Administrative Assistant – Region 1
Place of Hearing:	Chatsworth, California
Date of Hearing:	October 7, 2013
Date Hearing Closed:	November 21, 2013
Date of Award:	December 21, 2013
Relevant Contract Provisions ¹ :	Article 3, 15 and 19, M-39
Contract Year:	2006 - 2010
Type of Grievance:	Contract/Non-compliance

AWARD SUMMARY

The grievance is sustained. Postal Service is hereby Ordered to Cease and Desist from not properly staffing the accountable cage in the PM with qualified clerks. Management is immediately Ordered to schedule and assign a specific and qualified clerk to perform the PM cage duties and to notify said carriers as to who it shall be for every day of the week. Management is ordered to pay \$50.00 to Branch 2902 for its failure to honor the previous grievance decisions.

This arbitrator retains jurisdiction over any issue involving the remedy for 90 days or until its effectuation when the arbitrator's jurisdiction shall cease.


Ruben R. Armendariz, Arbitrator

¹ The parties are in possession of the relevant contract articles cited and need not be restated herein unless the arbitrator deems it necessary to address a certain point.

ARBITRATOR'S DISCUSSION, OPINION AND AWARD

This matter was heard on October 7, 2014 in Chatsworth, California. The parties to this proceeding agreed that the grievance was procedurally and substantively arbitrable and properly before the arbitrator. Union presented for testimony APWU Local Clerk President Alma Cudiamat, Carrier Shop Steward Angela Hale, NALC Branch 2902 President Frank Salazar, and Carrier Eric Mata. Postal Service presented for testimony OIC Annette Agner (December 2011 - April 2012), OIC Rob Garfinkle (May 2012 - August 2012), and OIC Aline Conrad (August 2012 - June 2013). The parties were afforded full opportunity to be heard, examine and cross-examine witnesses and to introduce evidence on the issues. Based on the entire record, my observation of the witnesses, after examination of the evidence, exhibits presented, post-hearing briefs² and arbitral citations³ submitted and arguments presented, this arbitrator makes the following findings and renders the following Discussion, Opinion and Award.

ISSUE

The parties' agreed to frame the issue as follows:

Did Management violate Articles 15 or 19 of the National Agreement, which incorporates the Management of Delivery Services Handbook M-39 and the City Delivery Carriers Duties and Responsibilities Handbook M-41, by not having a PM Clerk to check in carriers at the Chatsworth Post Office? If so, what is the appropriate remedy?

STATEMENT OF THE CASE

This is a contract grievance. On October 19, 2012 an Informal Step A grievance was initiated. Union argued Management has failed to honor previous Formal A settlements pertaining to proper staffing of the accountable cage in PM to properly clear Letter Carriers at the Chatsworth, California Post Office. Union argued Management is in violation of Article 15.2 Formal Step A (2), 15.3, and 19 of the

² The parties agreed to submit post-hearing briefs on November 7, 2014. Management requested and the parties amicably agreed to extend the submittance of post-hearing briefs to November 21, 2014. Both parties post-hearing briefs were timely received, thus the hearing closed on November 21, 2014.

³ The parties provided several arbitral citations and all were read. Only those citations of substantive value will be discussed herein.

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National Agreement, the JCAM, the M39 Handbook, the M-41 Handbook, and the Formal Step A decisions in Case Nos.: 12TV13CCHA, 11TV22CCHA, and 11TV15CCHA. Union argued that they have received numerous complaints that management was not staffing the accountable cage in the afternoon. No accountable cage clerk was available to clear letter carriers returning from the street. Union filed three separate grievances over this same issue in one year and in each case, management agreed to cease and desist this violation and to properly staff the accountable cage in the afternoon. Management has failed to honor their agreements. Union does not expect for a clerk to sit in the cage waiting for carriers to arrive. However, upon arrival of the carriers, the Union would expect for a clerk to go to the cage or to answer the page. This is not happening. Carriers are under the threat of being disciplined for clocking out after 5:00 p.m. or beyond their authorized time. Carriers have to make a decision, either to stand around and wait for a clerk for an undetermined period of time and risk discipline or to leave the accountable mail pieces, and hope for the best after clocking out. Other carriers wander the office looking for a clerk or a manager.

Union requests as a remedy (1) a Cease and Desist Order, (2) management to properly staff the accountable cage in the morning and afternoon with qualified employees, (3) a payment of \$5.00 to each carrier who submitted a statement for this grievance or \$50.00 to be paid to Branch 2902 for failure to honor the previous grievance decisions, and (4) Union requests GATS pay receipts for Postal Money Order within 7-days of settlement.

Union appealed this grievance to a Formal Step A meeting on November 20, 2012. Again no resolve was obtained and the grievance was received at Step B on November 30, 2012. The Dispute Resolution Team (DRT) reached an IMPASSE and a decision issued at Step B on December 28, 2012.

Thereafter, this matter was submitted to this arbitrator for decision.

STIPULATIONS

- (1) Joint Exhibit #1 – The National Agreement
- (2) Joint Exhibit 1A – The JCAM

- (3) Joint Exhibit #2 – (Grievance package)
- (4) Carriers who signed the group statements in the file would testify if called to the same content as Carrier Eric Mata.

UNION ARGUMENT

Union argues that they have met their burden of proof. The Postal Service has not complied with the previous Formal A grievance settlements. Clerk Alma Cudiamat testified that she is the AM accountable clerk. She stated that she completes Form 3821 to clear receipts and return to the carrier. Carriers should have accountable by 9:00 am. No one can check in their own accountable out, only an accountable cage clerk. She testified that in the morning she would find missing keys, gas cards, etc., and that she would clean up what was not properly cleared. Clerks complained to her that they were unable to perform their accountable cage duties because they were on the window helping customers. Management cannot check in carriers as it is craft-work. It is management's responsibility to staff clerks properly.

Union presented Carrier Shop Steward Angela Hale who testified that she filed this grievance because of the on-going issue of no accountable pm cage clerk. She stated the cage is not staffed properly in the pm and would have to wait 10-20 minutes a day. She does not like to leave her items un-cleared and has waited. The 100% standard goes down because you are waiting to be checked in, then they stand behind you and watch you work all week. Carriers cannot retrieve their own accountables.

Union presented Union President Frank Salazar who testified that he has filed this same issue grievance four times. Management is in breach of the prior settlements. Carriers can receive discipline if they go over their time and must have prior authorization. Carriers cannot leave keys and accountable mail at the cage. Carriers cannot leave mail un-cleared as it is a violation of the M-39.

Union presented Clerk Eric Mata who testified that there is no cage clerk most of the time and just leave accountables and goes. He stated he has waited for a cage clerk 10-15 minutes and this occurs every day.

Union argues the JCAM is clear and states, "When a dispute arises, you should go the JCAM first to see if the issue in dispute is addressed. If the issue is addressed in the JCAM, any dispute should be resolved in accordance with that grievance." If introduced as evidence in arbitration, the document shall speak for itself. Without exception, no testimony shall be permitted in support of the content, background, history or any other aspect of the JCAM's narrative."

Union argues the parties embodied the principle of compliance and an appropriate method for dealing with non-compliance (Page 41-17) of the JCAM, "In circumstances where the violation is egregious or deliberate or after local management has received previous instructional resolutions on the same issue and it appears that a "cease and desist" remedy is not sufficient to insure future contract compliance, the parties may wish to consider a further, appropriate compensatory remedy to the injured party to emphasize the commitment of the parties to contract compliances. In these circumstances, care should be exercised to insure that the remedy is corrective and not punitive, providing a full explanation of the basis of the remedy."

Union argues the Postal Service has failed to comply with the previous grievance settlements and requests the grievance be sustained and the remedy requested.

POSTAL SERVICE ARGUMENT

Postal Service argues the Union has failed to meet its burden of proof. It is the position of management that any clerk can clear a carrier in the PM, not just a specific 'cage clerk'. The record of evidence (pages 27-29 (J2)) and Aline Conrad's testimony proves management did schedule clerks to be available to clear the carriers when they return from their routes in the PM. As Ms. Conrad testified in pages 27 -29 (J2) are copies of the clerk schedules. These schedules demonstrated on each day of the week there were 4 to 5 clerks scheduled to be available to clear carriers from 4:00 PM up to as late as 6:00 PM, and a few days as late as 7:30 PM, well past when carriers return from their routes.

Postal Service argues the Administrative Handbook M-39 Section 116.1 states:

Schedule distribution clerks in a unit with decentralized distribution so that service standards will be met and an even flow of mail will be provided to the carriers each day throughout the year. Schedule the accountable clerk to avoid delaying the carriers' departures in the morning and for clearance of carriers on their return to the office.

Postal Service further argues that the Administrative Handbook M-39 Section 127.c states:

See that clerks are available to check in accountable items as efficiently and promptly as possible.

Postal Service argues that these provisions require management must schedule clerks to be available to clear carriers on their return to the office as efficiently and promptly as possible. The record evidence in the file proves management has scheduled clerks to be available to clear carriers (pages 27 - 29 (JX-2)). Witnesses from both parties testified when carriers return from their routes the clerks are engaging in other productive activities, such as assisting customers at the window, throwing parcels, dispatching a truck etc. and carriers may have to wait to be cleared as efficiently and promptly as possible. There is no contractual violation.

Moreover, Postal Service argues Article 3, Managements Rights of the National Agreement states:

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties;
- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted;

Postal Service argues Management has not committed any violation by exercising their right under Article 3 to assign clerks other duties while they are waiting for carriers to return from their routes to be cleared of their accountable items. Management maintains the methods, means, and personnel by which to determine how to efficiently and promptly as possible clear carriers of their accountable items.

Postal Service argues there was no testimony, or evidence that there were no clerks in the building to clear carriers. The Union argues carriers have to wait to be cleared by clerks; again there is

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no violation for carriers to have to wait to be cleared of their accountable items. There was testimony by both management and the union's witnesses that although carriers may have to wait at times to be cleared, because the clerks are performing other duties, the carriers are on the clock being paid while they are waiting to be cleared, there is no harm to the carriers.

Postal Service requests the grievance be denied.

DISCUSSION AND OPINION

In contract issue cases, the burden of proof rests on the Union.⁴ The arbitrator finds that the Chatsworth Post Office had three OIC's from December 2011 to June 2013, (OIC Annette Agner (December 2011 - April 2012), OIC Rob Garfinkle (May 2012 - August 2012), and OIC Aline Conrad (August 2012 - June 2013)). Three grievances were filed over the Postal Service's failure to have a PM cage clerk. Management argued that the clerk work schedules under OIC Conrad revealed that there were clerks available to perform cage clerk duties when needed. However, this argument fails when OIC Conrad tenure as an OIC was from August 2012 to June 2013. The grievance herein was filed on October 19, 2012. Thus, OIC Conrad had been designated OIC for 2½ months prior to the filing of this grievance. It is the arbitrator's Opinion management entered into these three grievance settlements in good faith with the sole purpose of resolving this dispute. But, because of the turnover of OIC management, these directives were never brought to the attention of the new OIC upon their arrival. It is clear to this arbitrator a dispute continued to exist over the Postal Service's continued failure to have a Clerk available to perform cage duties in the PM, otherwise we wouldn't have a 4th grievance filing before me. It is therefore the Opinion of this arbitrator management has not complied with the previous three

⁴ In order for the Union to demonstrate its burden of proof, the Union must establish the intent of the contract language. If the contract language is clear and unambiguous, the intent of the contract language has been established. If the contract language is not clear and unambiguous, the Union may establish its intent by relying on the parties bargaining history, its' past practices, arbitral authority, or by its' customs and practices within the industry. The Postal Service, on the other hand, in rebutting the Union's burden of proof, may rely on the same criteria.

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Formal A grievance settlements and is in breach. Union argued the Postal Service's continued failure to abide by the settlement is egregious and bad faith conduct. Union cites JCAM at 41-17 but this deals with Remedies and Opting involving a PTF or CCA in violation of Article 41.2.B.3 and is distinguishable from the dispute identified herein. The arbitrator finds that remedies involving discipline in a collective bargaining setting requires a make whole remedy. Remedies in a contractual setting would require the same. But here, we have three Formal A grievance settlements where management has agreed to a Cease and Desist settlement but failed to honor them. Union is now requesting from this arbitrator a (1) Cease and Desist Order (2) and management to properly staff the accountable cage in the morning and afternoon with qualified employees, (3) and a payment of \$5.00 to each carrier who submitted a statement for this grievance or \$50.00 to be paid to Branch 2902 for failure to honor the previous grievance decisions, and (4) Union requests GATS pay receipts for Postal Money Order within 7-days of settlement. In all remedies, care should be taken that it is reasonable, corrective and not punitive. In this regard, it is the Opinion of the arbitrator the remedy cited above is reasonable with the following modifications as follows and is so Ordered.

AWARD⁵

The grievance is sustained. Postal Service is hereby Ordered to Cease and Desist from not properly staffing the accountable cage in the PM with qualified clerks. Management is immediately Ordered to schedule and assign a specific and qualified clerk to perform the PM cage duties and to notify said carriers as to who it shall be for every day of the week. Management is ordered to pay \$50.00 to Branch 2902 for its failure to honor the previous grievance decisions.

This arbitrator retains jurisdiction over any issue involving the remedy for 90 days or until its effectuation when the arbitrator's jurisdiction shall cease.

Issued on the 21st day of December 2014 in San Antonio, Texas.


Ruben R. Armendariz, Arbitrator

⁵The proceeding was digitally recorded for use in preparing this award and is destroyed upon issuance of this award.