

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	(Grievant: Andre Hart
Between	(Post Office: LAX Dockweiler
UNITED STATES POSTAL SERVICE)	Case No.: 4E-19N-4E-C
and	(DRT No.: 21220069
National Association of Letter Carriers, AFL-CIO)	Union No.: UA43021C
)	

BEFORE: ARBITRATOR JONATHAN S MONAT

APPEARANCES:

For the U.S. Postal Service:	Jessica A Bowie
For the Union:	James Henry
Place of Hearing:	LAX Dockweiler
Date of Hearing:	November 9, 2021

AWARD:

Date of the Award: December 8, 2021

PANEL: Pacific California District 5

Award Summary

Grievance sustained. The Service shall cease and desist its continued violations of Articles 15, 17 and 31. The grievant shall be paid \$250 and the Service shall pay the Union \$3000 in compensatory remedy within 20 working days of this award as a repeat violator. The Arbitrator shall retain jurisdiction for sole purposes of remedy.



ISSUE

The NALC offered the issue as stated by the Step B Team in its Step B Impasse Decision dated June 24, 2021. The issue reads as follows:

“Did management at the Dockweiler-Marvin Gaye Facility violate the National Agreement (included but not limited to) Articles 3, 5, 15, 17, 19 and 31, M-01517 when they did not provide all the information and documentation from the Informal A meeting and non-compliant with multiple past settlements? If so, what is the appropriate remedy?”

Management introduced a new wording of the issue as follows:

“Does a non-Union steward have the right under Article to make a request for information? Does the Union have a right to ask for punitive damages when they have not made a “full and detailed” statement of the remedy sought and when they originally asked to be made whole?”

As a general rule, the issue framed at the Step B Decision level is the issue which goes forward to arbitration. To allow a complete rephrasing of the issue would change the fundamental nature of the grievance. In this case, the issue was defined clearly at Formal Step A (MP21) and remained the same throughout grievance process. The Postal Service offered no valid reason why the issue should be different. Its claim that the grievant, Andre Hart, had no right to file the grievance was ruled invalid. Mr. Hart’s only action to initiate the grievance was at Informal Step A where he had a right to make an inquiry for documentation on his own behalf. Secondly, there is no question that the JCAM permits punitive damages in the case of egregious violations of the National Collective Bargaining Agreement (CBA)

The issue remains as stated by the Step B Team and the Union grievance.

RELEVANT CONTRACT PROVISIONS

ARTICLE 5: PROHIBITION OF UNILATERAL ACTION

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

ARTICLE 15.3.A

A. The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in resolution of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end. At each step of the process the parties are required to jointly review the Joint Contract Administration Manual (JCAM)

ARTICLE 17 REPRESENTATION

17.3 Rights of Stewards. 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.

Steward Rights-Activities Included. A steward may conduct a broad range of activities related to the investigation and adjustment of grievances and problems that may become grievances....

Right to Information. The NALC's rights to information relevant to collective bargaining and to contract administration are set forth in Article 31. This section states stewards' specific rights to review and obtain documents, files and other records, in addition to the right interview a grievant, supervisors and witnesses.

ARTICLE 19 HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

ARTICLE 31 UNION-MANAGEMENT COOPERATION

Section 31.1 Information The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement.

Section 31.3 To obtain employer information the union need only give a reasonable description of what it needs and make a reasonable claim that the information is needed to enforce or administer the contract. The union must have a reason for seeking the information—it cannot conduct a “fishing expedition” into Postal Service records.

BACKGROUND

The grievant, Andre Hart, requested a copy of PS Form 4584 for a street observation conducted by Supervisors Mendoza and Ayala on February 17, 2021. The request was made on February 18. The information requested was not provided. The Branch filed a grievance on March 2, 2021, alleging management failed to provide information as required by Article 31 of the National Agreement. The grievance was not resolved at Joint Step A on April 30, 2021, or at Step B on June 24, 2021, after which the grievance was advanced to arbitration

A hearing was held at the LAX-Dockweiler Post Office on November 9, 2021. The Union presented three witnesses. The Postal Service presented no witnesses, choosing to make its case through argument. The parties made oral closing arguments and the record was closed.

POSITION OF NALC BRANCH 24

The Union introduced evidence in support of its argument that there is a long history of Dockweiler management ignoring and/or refusing requests for information. The Union made it clear that shop stewards have made a significant number of information requests deemed reasonable under Article 31. There have been at least five (5) prior grievance settlements with cash payments being agreed to for grievants. The Moving Papers contain copies of these settlements, none of which have been honored even though the National Agreement requires compliance with settlements. Union witness and Branch 24 president Leon Prude testified settlements went back as far as 2013. Mr. Prude stated the management deliberately did not comply and ignored the JCAM, a clear demonstration of a lack of good faith and blatant disregard for the CBA. Furthermore, Mr. Prude testified credibly that repetitive violations have been awarded compensation in prior settlement and Step B Decisions, some which are included in the Moving Papers.

Grievant Hart testified that he never received any of the information requested. He is entitled to request information at Informal Step A even though he was and is not a steward. The request was reasonable and a necessary document to establish the facts of his grievance. The Union argued further that it would not know whether an incident should be grieved without the relevant information it is permitted to request per Article 31. Management's continued refusal to provide information and honor grievance settlements is clear and indisputable evidence of wilful, deliberate and egregious violations of the JCAM and National Agreement. Such misconduct

permits the Arbitrator to award compensation to the grievant and union for the expenses incurred in handling these unnecessary actions by the Service.

The Union seeks a cease and desist order as well as an order that management pay the grievant compensatory damages.

POSITION OF THE POSTAL SERVICE

The Postal Service argued that the Union failed to prove any violation of the National Agreement. The grievant has a history of filing frivolous grievances in order to enrich himself. The grievant requested a PS Form 4584 after having been observed by management during a street observation. The Union failed to prove that he was entitled to a copy of this form. There were no contractual provisions cited to management as required nor did the Union provide a full and detailed statement of the facts relied upon to make the request. Furthermore, the grievant cannot confirm the date of the Informal A discussion, a task delegated to a certified steward. The grievant is not certified as steward. His signature violates Article 17.3, invalidating the grievance.

ARBITRATOR'S FINDINGS AND DECISION

As the moving party in a contract case, the Union needs to show by a preponderance of the evidence that management violated the National Agreement. The Arbitrator finds that the Union has met its burden.

The Postal Service raised the specious argument that the grievance must fail because the grievant was not a certified shop steward; therefore, not authorized to confirm the date of the Informal A discussion. Management alleged the grievant improperly signed PS Form 8190. The grievant acknowledged he is not a certified steward. However, he testified accurately that Article 15.2 permits him, as the aggrieved employee, to discuss his grievance with his supervisor within fourteen (14) days of the incident giving rise to the grievance or when the Union reasonably might have been expected to have learned of the facts giving rise to the grievance. A cursory examination of PS Form 8190 (MP21) shows clearly that grievant's signature is properly located in the Informal Step A section of the form, box 13b. Testimony of the shop steward corroborated this fact. Hence, the Postal Service's argument is rejected.

The resolution of grievances at the earliest possible level is a major tenet of the National

Agreement and JCAM. The Union is entitled to request information about a grievance that will help it decide what course of action to take. The right of stewards and other properly certified Union representatives to access “documents, files and other records necessary for processing a grievance or determining if a grievance exists...” is guaranteed by Article 17 and reinforced again in Article 31. The threshold for the steward is to “state how the request is relevant to the handling of the grievance or the potential grievance.” Management is obligated to respond in a timely and cooperative manner to all reasonable information requests.

The Arbitrator finds that the Union’s request was not unreasonable. Grievant’s request for a copy of his street observation made by two supervisors on February 17, 2021. Used to evaluate a carrier’s performance, the grievant has a legitimate reason to receive a copy. Mr. Hart did not need to request this form through a shop steward but as the aggrieved employee at Informal Step A per Article 15.3. His requests were not frivolous nor seeking to enrich himself. To deny the reasonable information request violated the National Agreement, harming both grievant and Union with the effect of hindering the investigation and resolution of grievances.

The file contains significant evidence that management at the Dockweiler facility has historically and consistently failed to comply with information requests according to previous settlement agreements dating back to 2013 (MP33-40). The grievant and the Union complied with the requirements of Articles 17 and 31. Management’s continued failure to comply with the instant request and many prior information requests is strong evidence of egregious bad faith, conduct opposite of the intent of the National Agreement and JCAM. In the instant case, management has been uncooperative at every step to arbitration going so far as to label the grievant the violator through the filing of frivolous grievances to enrich himself. The grievant, a 24-year career carrier all in the Dockweiler facility, exercised his contractual rights in good faith. Local President Prude credibility supported the grievant.

It is axiomatic that for every violation of one party’s contractual rights by the other, the offended party is entitled to a remedy. Management’s history of failing to comply with reasonable information requests has subject to settlements and arbitration decisions which included financial compensation to the grievant or the Union. However, the Service persisted in violating Articles 17 and 31 inflicting unnecessary financial costs upon the Union and itself. Prevention is

cheaper than repair. Had the Service met its contractual obligations in the first place, there would be no need to repair the harm caused by its violations through a compensatory remedy.

AWARD

A finding that management violated the National Agreement and JCAM when it failed or refused to provide information reasonably requested by the Union and the grievant is affirmed. The Union requested a remedy of \$250 is affirmed. In addition, the Service is ordered to cease and desist its violations of Articles 15, 17 and 31 with regards to stewards' reasonable requests for information. The Service will pay Angel City Branch No. 24 the sum of \$3000 within 20 working days of this award to compensate the Union for the expenses of an unnecessary arbitration to enforce its contractual rights. The Arbitrator retains jurisdiction for the sole purpose of remedy.