

REGULAR ARBITRATION

In the Matter of the Arbitration
Between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF
LETTER CARRIERS, AFL-CIO

) Grievant: Andre Hart
(
) Post Office: Pico Heights LAX
(
) Case No.: F11N-4F-C 15303607
(
) DRT No.: 01-348215
(
) Union No.: UA-651-15-C

BEFORE: THOMAS F. LEVAK, ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Antoinette Greer

For the Union: Jeff Frazee

Place of Hearing: 3585 S Vermont Ave, Los Angeles CA

Date of Hearing: May 13, 2016

Date of Briefs: May 20, 2016

Date of Award: May 31, 2016

PANEL: Pacific, Region 1

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Award

Management at the Dockweiler (formerly Pico Heights) Station violated Article 19, M-41 Section 442 and DRT Decision UA-1146-11-C when it did not sign and date the Form 1571 submitted by the Grievant on August 3, 2015. The grievance is sustained. Dockweiler Management is ordered to cease and desist from any further violations.



Thomas F. Levak
Arbitrator's Signature

OPINION

I. THE ISSUES.

b. The Substantive Arbitrability Issue.

At the commencement of the hearing, the Postal Service raised a substantive arbitrability contention which asserted that another similar Form 1571 grievance that was withdrawn bars a hearing on the merits. The Union asserted that the other grievance involved different circumstances and that its withdrawal has no relevance to the case now before the Arbitrator. After due consideration, the Arbitrator found for the Union. The grievance is substantively arbitrable.

b. The Merits.

This case concerns an August 4, 2015 Informal Step A grievance initiated by the affected Grievant, Andre Hart, Pico Heights (now merged into Dockweiler) Station Letter Carrier, which asserted that the Postal Service violated the National Agreement when, on August 3, 2015, Pico Heights managers failed and refused to sign a Form 1571 that he submitted to them. The stipulated issue, as framed by the DRT and mutually modified by the parties at the commencement of the hearing, is:

Did Management at the Pico Heights Station violate Articles 3, 5, 17 & 19; M-01492 & M-00144; DRT Decision UA-1146-11-C; and M-41 Section 442, when Management did not sign and date the Form 1571 submitted by the Grievant on August 3, 2015? If so, what is the remedy?

The Union informed the Arbitrator that it was withdrawing its Article 15.3a complaint and the allegation that the violation was of a repetitive and ongoing nature.

II. THE FACTS.

Background.

At the time the grievance was filed, Tom Cloonan had served as Dockweiler Station MCS since May 2015. On occasion, he directly supervised Letter Carriers. Peggy Kay was SCS. The Grievant had been employed as a Letter Carrier since August 16, 1997, the last 14 years at the Dockweiler/Pico Heights Station. On August 3, 2015 he was assigned to Route 006045.

The Event Giving Rise to the Grievance.

The morning of August 3, 2015, the Grievant submitted a Form 3996 requesting 3:30 hours of overtime. 1:57 hours was approved. He delivered his route for 8 hours, calling the Station at 2:00 p.m., at which time Kay told him to stop delivering and to bring the undelivered mail back to the Station. He did so.

Immediately upon his return to the Station, he submitted a Form 3996 requesting 45 minutes of overtime to Cloonan and, at the same time, submitted an initialed Form 1571, asking him to sign it and provide him with a copy. Cloonan refused, telling him that because the mail was going back out he was not required to do so. He then took the Form 1571 to Kay and asked her to sign it. She too refused. The Postal Service contends that the Grievant never submitted the second Form 3996, but there is no reason to disbelieve his testimony.

The Grievant further testified that the action of those managers was a continuation of an ongoing problem. However, given the issue stipulated to by the parties, the Arbitrator finds that his testimony is outside of the scope of the grievance to be resolved by him. In any event, the persuasive evidence was that an earlier instance was approximately five years ago, a “stale” incident.

III. UNION CONTENTIONS.

First, the Grievant’s testimony established that he followed the procedures set forth in the National Agreement and the M-41 when he submitted his Form 3996s and 1571.

Second, Management violated National Agreement Article 41.3.G, which expressly provides that upon the submission of a Form 3996 and the request of a Letter Carrier, Management must provide a duplicate copy of a submitted Form 1571.

Third, Management violated M-41 Sections 111.2, 131.4, and 442.1–442.3, which require that a submitted Form 1571 must be signed and a copy returned whenever the Letter Carrier’s mail has been curtailed.

Fourth, Management violated the terms of Step B Decision UA-1146-11C, which established that it must follow the mandates contained in the National Agreement and the M-41.

Fifth, the persuasive evidence was that Management’s violations were blatant, willful and deliberate, and were not an isolated instance.

IV. POSTAL SERVICE CONTENTIONS.

First, there was no persuasive evidence that the Grievant ever submitted a second Form 3996.

Second (and as noted above by the Arbitrator), the claim that the managers' action was part of some ongoing problem is outside the scope of this arbitration.

Third, in any event, Management has the responsibility under the National Agreement and the M-41 to complete and return a Form 3571 only when mail is undelivered. The form itself states that it is an "Undelivered Mail Report." Since the mail the Grievant returned to the Station was going back out that very day, that mail was not "undelivered."

Fourth, the Step B Decision relied upon by the Union did not relate to the Form 3571, but rather to two Step A Settlements that concerned Form 3996s. Moreover, that Decision was submitted during the course of the grievance procedure as supposed proof of ongoing violations, and as such has no applicability.

Fifth, in any event the Step B Decision cannot trump the National Agreement and the M-41.

Sixth, the Grievant suffered no harm or financial loss, so the Union is not entitled to any remedy. See, Elkouri & Elkouri, *How Arbitration Works*, BNA, 6th Ed., 2003, pp. 1201-1202.

V. ARBITRATOR'S CONCLUSION.

The Arbitrator concludes that the Union established by a preponderance of the evidence that Management violated the National Agreement and the M-41. Therefore, the grievance will be sustained. The following is the Arbitrator's rationale.

First, M-41 Sections 111.2, 131.4, and 442.1-442.3 are clear and unambiguous. They provide, on their face, that whenever a Letter Carrier returns mail to an office (whether an installation, station or whatever), before leaving the office, he or she must complete an initialed Form 1571. Those Sections further provide that the manager or supervisor to whom the Letter Carrier submits the completed Form 1571 must sign it and provide a copy to the Letter Carrier.

Second, Step B Decision UA-1146-11C affirms the M-41 requirements placed

on Management. The Arbitrator has carefully examined both the Step B Decision and the Settlements concerned, and finds that the Step B was in accordance with the M-41.

Third, the Postal Service's contention that returned mail that it intends to send back out on the same day that it is returned does not fall under the M-41 is inventive but clearly cannot be accepted. In the first place, a manager or supervisor may not follow through with that intention. In the second place, a completed Form 3571 completes the office's record of what occurred with mail on a particular route. Third, and more importantly, a returned, initialed copy of a Form 1571 is the only documentary evidence that a Letter Carrier will have that he or she actually returned the mail, and in what amount. Absent such a copy, the Letter Carrier may not be able to defend against any possible adverse action, whether a Discussion or actual discipline.

For all the above reasons, the grievance must be sustained.

Because the incident at hand appears to have been isolated, the only remedy appropriate is a cease and desist order.