

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)
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 between)
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 UNITED STATES POSTAL SERVICE)
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 and)
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 NATIONAL ASSOCIATION OF LETTER)
 CARRIERS)

AWARD
 Grievant: Class Action
 Post Office: Fayetteville, NC
 Case No.: 4B 19N 4B C 21399097
 NALC No.: CC0614
 DRT No.: 09-553210

Before: Jacquelin F. Drucker, Esq., Arbitrator

Appearances:

For the NALC: Don Lyerly, Regional Administrative Assistant

For the Postal Service: Amit Rana, Labor Relations Specialist

Date of Hearing: March 15, 2022

Place of Hearing: 301 Green Street
Fayetteville, NC

Date of Award: April 15, 2022

Relevant Contract Provision(s): Articles 3, 7, and 15

Contract Year: 2019 - 2023

Type of Grievance: Contract

AWARD SUMMARY

As a threshold matter, Management has challenged arbitrability, citing the principle of *res judicata*. That challenge is denied. The grievance is arbitrable. The Postal Service and the NALC at Step B found that Management at this installation breached Articles 7 and 3, and the 2021 Award, by assigning CCAs to work in the Rural Carrier Craft. The only issue presented in arbitration, therefore, is the remedy. In that regard, the Arbitrator orders that Management cease and desist from assigning CCAs to Rural Carrier duties. She further finds that the appropriate compensatory relief for the breach, which affects not only the individual CCA, but also the integrity and staffing of the unit and crafts, and which occurred in defiance of the clear cease and desist directives set forth in the 2021 Award and the 2021 Step B Decision, is additional compensation to the affected CCA at time and one-half for the hours spent working in the Rural Carrier Craft.



I. STATEMENT OF THE CASE

The instant grievance is presented in arbitration for resolution of the issue of remedy and Management's threshold challenge to arbitrability. The parties at Step B agreed that, at the Fayetteville installation, "management violated Articles 3 and 7 of the National Agreement by improperly assigning CCA Gholston to work in the Rural Letter Carrier Craft on June 14, 2021." It also was agreed that "in violating Articles 3 and 7 of the National Agreement, management necessarily violated Article 15 of the National Agreement by violating previous Step B Decisions included in the case file and Arbitration Award K16N-4K-C20295971; specifically, the directive for management to 'cease and desist' violating Article 7 of the National Agreement and other similar type directives."

The hearing of this grievance was held on March 15, 2022, at the Postal Service facility located at 301 Green Street, Fayetteville, North Carolina, and appropriate measures were taken to ensure pandemic-related safety of all participants. At hearing, the parties were ably represented. Each party was given a full and fair opportunity to present evidence through documents and witness testimony, and to make arguments. All witnesses testified under oath and were subject to direct, cross, and redirect examination. In reaching the remedial determinations set forth herein, the Arbitrator has given full and careful consideration to all arguments posed, all awards and authorities cited, and all evidence of record.

Prior to the hearing, the parties entered into a Pre-Arbitration Agreement dated March 2, 2022, stipulating that eleven other grievances from this installation, each posing similar or related violations and concomitant issues of remedy, would be held in abeyance pending the outcome of the instant arbitration and that the remedy determined in this case will be applied to each of those eleven cases.

II. FACTS AND ANALYSIS

A. Prior Violations Found in Arbitration and Step B Decision

The parties at Step B decided and the Postal Service in this case thus acknowledges that Management breached the National Agreement when it assigned City Carrier Assistant employees to perform Rural Carrier work. Indeed, a few months before the breach that occurred here, Arbitrator Glenda August on February 19, 2021, issued an Award (“February 2021 Award”) holding that Management at this Post Office violated the National Agreement on May 10, 2020, when it engaged in the same behavior: assigning City Carrier Assistant employees to perform work in the Rural Carrier Craft. As in the instant case, that arbitration involved a single grievance but the parties had agreed to hold a number of other grievances, posing the same allegations, in abeyance pending the outcome of that arbitration.

Arbitrator August, citing the language of Article 7, Article 3.F, and the explicit language the parties developed in the JCAM, concluded that there was “no dispute” that Rural Carrier duties are excluded from the crossing-craft provisions of the contract. The Postal Service’s primary defense to the action that was clearly contrary to the terms of the contract had been that the pandemic created an unforeseen emergency situation that, under Article 3, Section F, entitled Management to take actions that were otherwise prohibited. Arbitrator August rejected that argument, noting that any effect that the pandemic had on the staffing and hiring difficulties had been shown to be recurring in nature and, therefore, not a basis for invoking Article 3, Section F.

With regard to the remedy, Arbitrator August addressed the Union’s argument that, in addition to a cease and desist order, Management’s repeated breaches of Article 7 in this regard warranted an award of compensation to each affected CCA of an additional 100% at the straight-time rate or equivalent compensatory time off. Arbitrator August rejected the suggested remedy of compensatory time off, given the existing staffing challenges faced by the Postal Service. In addition to ordering the Postal Service to cease and desist, however, she ordered that the Postal Service was to “compensate the affected CCAs with an additional payment at 100% of the straight time rate for all hours worked in the rural craft on May 10, 2020.”

That Award was issued on February 19, 2021. Not long thereafter, the Union and the Postal Service considered a series of grievances, most of which related to dates after the issuance of the 2021 Award and all of which alleged the same violation as addressed in the February 2021 Award. At Step B, on May 7, 2021, the parties agreed that Management at this installation again had violated Article 7 of the National Agreement. Further, while the parties stated that there “remains some dispute over the appropriate remedy,” they agreed (1) that Management was instructed to refrain from assigning Carriers, including CCAs, to the Rural Carrier Craft and that each affected Carrier was to receive the compensatory remedy as applied in the February 2021 Award of an additional 100% of wages at the straight time rate for hours worked in the Rural Craft.

B. The Instant Grievance

Soon after, even though the clear terms of both the February 2021 Award and the May 2021 Step B Decision directed Management at this installation to cease the violative conduct, similar breaches recurred. Grievances were initiated regarding the breaches, one of which occurred on June 14, 2021, and is addressed herein. There was no Step A meeting on the instant grievance. It progressed to Step B, where the parties agreed that Management yet again had again violated Article 7 and that the provisions of Article 3, Section F provided no excuse. The parties were not able to reach agreement regarding the appropriate remedy. That, therefore, is the issue presented in this arbitration

C. Res Judicata Effects and Arguments

As an initial matter in the instant case, Management argues that this grievance is not arbitrable because the issue in dispute, says Management, was decided in the February 2021 Award by Arbitrator August and cannot be re-arbitrated. As recognized by the Step B Decision, the facts regarding the basic breach here are the same and, therefore, the parties herein of course are bound by the arbitral holding in this installation that it is a violation of Article 7 for Management to assign CCAs to perform Rural Carrier work and that the existence of the ongoing pandemic

does not excuse Management from complying with that contractual prohibition. The parties acknowledged this in the Step B Decision in which they jointly concluded that Management again had breached the National Agreement and, in doing so, failed to comply with the cease and desist order issued in that Award. The February 2021 Award thus stands in full force and effect, and adherence is required as provided in Article 15 and as has been repeatedly emphasized by the Postal Service at the highest levels. This is not in dispute, nor is it an issue presented in this proceeding for the Arbitrator to decide.

Res judicata means only that the thing has been decided. Thus, if the same facts and circumstances arise, as they have here, Management does not receive another chance to argue that its conduct is permissible. Rather, Management was on clear notice, effective February 2021, that it was a violation to assign CCAs to perform Rural Carrier work and Management is expected to have complied with that holding. Even if this Arbitrator disagreed with the analysis and findings set forth in the February 2021 Award (which she does not), she would not be at liberty to reconsider that issue in this forum because it does have binding effect at this installation, and there is an obligation to comply. When Management fails to adhere to the same obligations that have been decided and reiterated, however, it is the grievance mechanism that enables the Union to cite and challenge that failure and to seek redress. The instant grievance has been pursued to this forum not because the Union seeks to relitigate the issue on the merits but, rather, because Management has failed to abide by the contract and the binding decision, and a remedy must be determined.

Management, however, extends its *res judicata* argument to the remedial portion of the February 2021 Award and contends that the remedy applied there is binding on all future violations and cannot be changed. It says that the Union is merely seeking to try additional arbitrators who may wish to impose harsher remedies when the specific remedy already has been determined. Management contends that if the Union insists on following the February 2021 Award as to the merits (which, of course, Management must do), the Union also must be restricted to the remedy achieved there.

Yet the question of remedy in this case is not the same as posed in the February 2021 Award, and comity of issues is required for *res judicata* effect. There is no question as to whether Management's actions breached the contract. They did. The question is what shall be the appropriate remedy for a violation that occurred on June 14, 2021, a mere four months after the February 2021 Award, a few weeks after the Step B Decision, and more than a year into the pandemic. The redress in this case therefore pertains not just to the breach of Article 7 but the additional element of failure to abide by a cease and desist order from the February 2021 Award and the similar cease and desist instruction issued by the parties' own mechanism in May 2021. Thus, there is no theory of *res judicata* that would limit the remedy for actions taken in June 2021, in clear and knowing breach of cease and desist directives, to only the remedies that were imposed in February 2021, for a breach had that occurred in May 2020.

D. The Appropriate Remedy

In arguing that no greater remedy and, perhaps, a lesser or no remedy, is appropriate, Management stresses that, notwithstanding efforts to comply, it continues to face the same staffing and personnel challenges that gave rise to the breach that occurred in May 2020. The Arbitrator recognizes that it was not until February 2021 that Management was placed on formal binding notice that (a) the action of assigning CCAs to Rural Carrier work violated the contract and was not excused by the pandemic-related circumstance and (b) Management must cease and desist from such action. But, thereafter, Management had ample time to take steps to deal with the staffing issues that it says gave rise to the impermissible assignment. Yet those steps were not taken and Management, by then knowing it was violating the contract, continued to act in breach of contract and in defiance of the February 2021 Award and then continuing, in this case, in defiance of that Award AND the May 2021 Step B Decision. Difficulty in achieving compliance does not change the nature of a clear contractual obligation, nor does it relieve the breaching party from responsibility for a remedy. If a party seeks to be released from a contractual obligation, the party must negotiate a change in the contract. If it simply repeats the breach, the deleterious effects are exacerbated and will give rise to a responsive remedy.

Management's theory that it may continue to ignore the contract and the cease and desist orders, engage in violative assignments, and then simply pay the 100% additional compensation indicates that it seeks to restructure the National Agreement. Management seems to suggest that the February 2021 Award simply created a formula saying that it was acceptable to cross crafts into the Rural Craft as long as the premium of 100% additional wages is paid. That, however, was not the holding. That Award found a contract breach --- a failure by the Postal Service to abide by the very terms to which it agreed and by which it is legally bound. But Management wishes to address ongoing or anticipated staffing situations by being relieved of its contractual obligations, being released from the cease and desist orders, and creating permissive crossing of crafts into the Rural Craft in exchange for a premium. This could be achieved only through negotiation with the Union, not by asking arbitrators to ignore the contract and ongoing breaches.

Management also argues that not every breach requires a remedy because sometimes there is no harm. While there are instances in which a breach is so minor that it is deemed to be de minimis and therefore not a breach. That is not the case here, for the breach is significant, on-going, and in defiance of clear directives to cease. Moreover, there indeed is harm caused by the breach. The CCAs are being required to perform work they did not anticipate and that is not consistent with what they were hired to do under the contract that protects them and their work. Further, the integrity of the craft, a concept the parties jointly recognized in the National Agreement, is compromised with each breach, as is the integrity of the bargaining unit.

The Union has argued that a part of the remedy at this point, following the defiance of the February 2021 Award and the May 2021 Step B Decision, should involve more than financial relief. The Union asks that any CCA who was inappropriately required to work in the Rural Craft should be awarded not only monetary relief but also compensatory time off. The Arbitrator recognizes the frustration faced by a party when it seems that the cost of the breach, in dollars, does not result in compliance. Yet, while the Union's thinking in that regard is creative, it draws on a remedy in an award that addressed a different form of breach. In supporting this theory, the Union has cited *United States Postal Service and National Association of Letter Carriers (Wilmington, NC)*; Case No. K11N 4K C 19326208; 09-475315 (Wolitz, 2019), in which paid time off was part of the awarded remedy. The breach in that case, however, involved improperly

requiring non-overtime-desired-list employees to work overtime. The wrong in that case had actually resulted in an infringement of the unit employees' contractually protected time off duty. According, a remedy that provided time off had a direct correlation to the wrong, which is not the case with the instant breach.

The Union also argues in favor a punitive remedy, designed to penalize Management for the continued breaches and to deter future noncompliance. Management responds that punitive remedies are not appropriate under the National Agreement. There are awards in which punitive damages have been granted when breaches are found to have been willful and wanton, such as *United States Postal Service and National Association of Letter Carriers (Roanoke Rapids, NC)*, Case No. K16N 4K C 20309966; 09-509728 (Stanton, 2021). In this case, however, the breaches, while repeated and knowingly committed, have not moved into the realm of willful and wanton actions that warrant the extraordinary relief of punitive damages. The scope of the remedy, therefore, remains one that is compensatory. As noted above, the CCAs have experienced contractual harm that must be addressed and the consequence of inappropriately using CCAs to cross into the Rural Craft disguises the needed staffing levels and thus has a detrimental effect on the integrity and scope of the craft and, ultimately, the unit. That effect increases with repeated breaches that, while achieving only stop-gap, haphazard fixes, delay and interfere with the proper, contractual, systemic measures that should be taken to deal with the staffing and workload issues.

AWARD

For these reasons, the measure of damages that was applicable for a breach that occurred in May 2020 no longer addresses the full impact of the breaches that occurred more than a year later and in defiance of an Award and a Step B Decision that stressed the need to adhere to the contract and, if followed, would have resulted in resolution of the staffing issues through proper contractual and organizational means. Thus, the remedy for the breach acknowledged herein is that Management will cease and desist from assigning CCAs to Rural Carrier Craft work and the CCA who was so assigned will be compensated for that time at the rate of time and one-half, in addition to the CCA's regular compensation, for the time worked in the Rural Carrier Craft.

April 15, 2022

A handwritten signature in blue ink, reading "Jacquelin F. Drucker". The signature is written in a cursive style with a large, looping initial "J".

Jacquelin F. Drucker, Esq.