

FROM A TO ARBITRATION

EPISODE 29- M-01967



M-01967 AND ARBITRATION C-34197

- A HUGE WIN FOR THE NALC AND ESCALATER MONETARY AWARDS
- WE NEED TO GET BETTER AT ESCALATED MONETARY AWARDS AND THIS WILL BE THE FIRST EPISODE ON THAT
- THESE TWO CASES NEED TO BE IN EVERY FILE THAT WE SEND UP

THE HISTORY OF THE CASE

- THIS ORGINIATED FROM KINGSPORT TENNESSEE AND THIS IS AN ARBITRATION THAT COREY DID IN FRONT OF ARBITRATOR ROBERTS
- IT WAS DEALING WITH NON COMPLINACE
- MANAGEMENT SHOWED UP AND TRIED TO INTIMIDATE THE ARBITRATOR. THE CASE WAS C-34197
- THE LAW DEPARTMENT WROTE THE OPENING ARGUMENT FOR THE POSTAL SERVICES ADVOCATE AND THE ARBITRATOR PUT THE WHOLE 30 MINUTE OPENING ARGUMENT IN THE CASE FILE (PG 6-16)

ESCALATED MONITARY AWARDS

- THE CASE TALKS ABOUT ARBITRATOR MITTENTHAL ON THE STATUS QUO ANTE. YOU WILL ALWAYS HEAR ABOUT THIS CASE WHENEVER YOU HEAR ABOUT ESCALTED MONITARY AWARDS
- STATUS QUO ANTE- MEANING YOU CAN NOT PUNISH THE POSTAL SERVICE AND AWARD THE UNION ANYTHING ABOVE THE STAUS QUO ANTE
 - EXAMPLE: ARTICLE 8 VIOLATION= IF IM DUE FOR 2 HOURS, YOU CAN'T AWARD ME 3. THE STAUS QUO ANTE WOULD BE TO PAY ME FOR 2 HOURS

SO, THIS IS SAYING THAT WE CAN'T GO ABOVE THE STATUS QUO ANTE AND ASK FOR HIGHER MONITARY AWARDS

ARTICLE 41

- MANAGEMENT WILL TRY TO SAY THAT ARTICLE 41 ONLY PERTAINS TO OPTING
- SOME ARBITRATORS MAY AGREE WITH THAT
- THE UNION DOES NOT. ARTICLE 41 CAN BE USED FOR MONETARY ESCALATIONS
- ARTICLE 41.2.B.5 STATES : (LAST PARAGRAPH) 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 ENSURE 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 COMPLIANCE. IN THESE CIRCUMSTANCES, CARE SHOULD BE EXERCISED TO ENSURE THAT THE REMEDY IS CORRECTIVE AND NOT PUNITIVE, PROVIDING A FULL EXPLANATION OF THE BASIS OF THE REMEDY.

C-34197 MANAGEMENT'S ARGUMENT

- ACCORDING TO THE EMPLOYER'S ARGUMENT, NATIONAL ARBITRATOR MITTENTHAL SAID IT, NATIONAL ARBITRATOR BEYERS SAID IT, NATIONAL ARBITRATOR SNOW SAID IT, NATIONAL ARBITRATOR AARON SAID IT AND ALL OF THESE ARBITRATORS AGREE, STATUS QUO ANTE MUST BRING THE EMPLOYEE AND THE EMPLOYER BACK TO WHERE THEY WOULD HAVE BEEN, HAD IT NOT BEEN FOR THE VIOLATION.

THESE ARE THE USUAL SUSPECTS THAT MANAGEMENT WILL ALWAYS HANG THEIR HAT ON EVERYTIME

C-34197 MANAGEMENT'S ARGUMENT

- MANAGEMENT ALSO ADVISES THIS ARBITRATOR THAT COURTS HAVE VACATED ARBITRAL DECISIONS IMPOSING PUNITIVE REMEDIES OR PENALTIES FOR BREACHES OF LABOR AGREEMENTS, WHERE THE COLLECTIVE BARGAINING AGREEMENTS DID NOT EXPLICITLY PROVIDE FOR PUNITIVE AWARDS AND THE EMPLOYER DID NOT ENGAGE IN WANTON AND WILLFUL MISCONDUCT.

SO, THEY ARE TELLING THE ARBITRATOR RIGHT THERE WHAT THEY ARE GOING TO DO IF THEY RULE AGAINST THEM. FUNNY THING IS , THE COURTS RULED AGAINST THEM AND SIDED WITH THE ARBITRATOR IN C-34197

C-34197 LANGUAGE

- THE AWARD OF PUNITIVE DAMAGE AGAINST THE SERVICE IS BARRED BY THE PRINCIPLES OF SOVEREIGN IMMUNITY, AS THE EMPLOYER ADVOCATE ONCE AGAIN, REPETITIVELY REASSERTS, IS BECAUSE THE COSTS ARE SIMPLY PASSED ON TO RATEPAYERS.
 - SO HE'S SAYING YOU ARE HURTING THE CUSTOMERS IF YOU DO THAT.
- AS REFERENCED BY THE SERVICE, IN BOWEN V. THE POSTAL SERVICE, THE COURT SET ASIDE A JURY VERDICT AWARDING THE PLAINTIFF PUNITIVE REMEDIES AGAINST THE UNION, HOLDING THAT SINCE SOVEREIGN IMMUNITY BARRED THE EMPLOYEE'S RECOVERY OF PUNITIVE DAMAGES AGAINST THE EMPLOYER, THE POSTAL SERVICE, FOR HIS WRONGFUL DISCHARGE, IT WAS NOT FAIR TO IMPOSE A PUNITIVE DAMAGE AGAINST THE UNION FOR ITS ARBITRARY AND PERFUNCTORY HANDLING OF THE PLAINTIFF'S MERITORIOUS GRIEVANCE.
 - SO HE'S SAYING THAT SOVEREIGN IMMUNITY PROTECTS THEM FROM PUNATIVE AWARDS (PUNATIVE DAMAGES)

SUMMARY OF THE CASE

- ALL UNION ADVOCATES NEED TO READ MANAGEMENT'S POSITION IN THE CASE
- THE ARBITRATOR WAS VERY GOOD AND PUT IN THE ENTIRE POSITION. HE KNEW THEY WERE GOING TO TAKE IT TO COURT, SO HE PUT IN THE ENTIRE OPENING POSITION INTO HIS DECISION
- THE UNION RECEIVED A HUGE SUM, ALMOST \$300,000, AND MANAGEMENT ATTEMPTS TO VACATE THIS DECISION IN COURT
- THE JUDGE RULES IN THE UNION'S FAVOR

FUTURE COMPLIANCE

- YOU NEED TO PUT BOTH C-34197 AND M-01967 TOGETHER IN YOUR FILE AS THEY BOTH WILL MAKE IT EASIER ON THE ADVOCATE IF THE STEWARD DOES IT AT INFORMAL AND FORMAL A LEVELS RATHER THAN TRYING TO ATTEMPT TO PUT IT IN AT ARBITRATION
- EXAMPLE: IF YOU ARE FILING ARTICLE 8 GRIEVANCES, WE WANT THE NON-ODL CARRIERS TO GET ADMIN LEAVE AND THE ODL CARRIERS TO GET PAID THE TIME THE NON-ODL CARRIERS WORKED, AND FOR FUTURE COMPLIANCE WE ARE GOING TO ASK FOR \$50 PER CARRIER YOU CAN USE THESE IN YOUR GRIEVANCE TO PROVE THAT IT IS POSSIBLE AND JUST TO GET HIGHER COMPENCITORY REMEDIES

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- SO, THERE ARE TWO QUESTIONS THAT I NEED TO ADDRESS IN THIS CASE. THE FIRST IS WHETHER THE DOCTRINE OF SOVEREIGN IMMUNITY SHIELDS THE USPS FROM LIABILITY FOR PUNITIVE DAMAGES, AND THE SECOND IS WHETHER THE ARBITRATOR EXCEEDED HIS AUTHORITY BY AWARDING A REMEDY THAT WAS NOT EXPRESSLY DEFINED IN THE CBA. THE ANSWER, AS I SEE IT, TO BOTH QUESTIONS IS NO. WITH REGARD TO SOVEREIGN IMMUNITY, THE GOVERNMENT CONTENDS THAT BECAUSE USPS IS AN INDEPENDENT ESTABLISHMENT OF THE EXECUTIVE BRANCH, IT CANNOT BE HELD LIABLE FOR PUNITIVE DAMAGES DUE TO SOVEREIGN IMMUNITY. THE UNION, ON THE OTHER HAND, ARGUES THAT CONGRESS WAIVED SOVEREIGN IMMUNITY AS TO USPS IN THE PRA AND, THEREFORE, USPS IS SUBJECT TO PUNITIVE DAMAGES WHEN APPROPRIATE. I FIND THAT THE UNION HAS THE MORE CONVINCING ARGUMENT HERE.

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- ABSENT A WAIVER OF SOVEREIGN IMMUNITY, THE FEDERAL GOVERNMENT IS NORMALLY IMMUNE FROM SUIT. HOWEVER, CONGRESS HAS WAIVED SOVEREIGN IMMUNITY FOR CERTAIN FEDERAL ENTITIES BY INCLUDING A PROVISION THAT THE ENTITY CAN "SUE AND BE SUED" IN ITS ENABLING LEGISLATION. AND I'M CITING TO LOEFFLER V. FRANK, 486 U.S. 549, 554. IF THAT LANGUAGE IS INCLUDED, THEN IT IS PRESUMED THAT SOVEREIGN IMMUNITY IS WAIVED UNLESS IT CAN BE SHOWN THAT THE TYPE OF SUIT IS EITHER (1) NOT CONSISTENT WITH THE STATUTORY OR CONSTITUTIONAL SCHEME, (2) THAT A RESTRICTION OF GENERAL AUTHORITY IS NECESSARY TO AVOID GRAVE INTERFERENCE WITH GOVERNMENT FUNCTIONS, OR (3) FOR OTHER REASONS, IT WAS PLAINLY CONGRESS'S PURPOSE TO USE THE CLAUSE IN A NARROW SENSE.

M-01967 CONTINUED

- IN USPS'S ENABLING LEGISLATION, CONGRESS STATED, IN NO UNCERTAIN TERMS, THAT USPS "CAN SUE AND BE SUED IN ITS OFFICIAL NAME." AND I'M CITING FROM 39 U.S.C. § 401(1). IN FACT, IN LOEFFLER, THE SUPREME COURT HELD THAT THE LANGUAGE IN THE PRA GAVE THE USPS THE "STATUS OF A PRIVATE COMMERCIAL ENTERPRISE" AND THAT CONGRESS WAIVED ANY OTHERWISE EXISTING IMMUNITY OF USPS FROM INTEREST AWARDS. THIS COURT UNDERSTANDS THE SUPREME COURT'S HOLDINGS TO MEAN THAT UNLESS "ONE OF A LIMITED SET OF EXCEPTIONS APPLIES ... AN AGENCY OR OTHER FEDERAL ENTITY WITH A SUE-AND-BE-SUED CLAUSE CANNOT ESCAPE THE LIABILITY THAT A PRIVATE ENTERPRISE WOULD FACE UNDER SIMILAR CIRCUMSTANCE." AND I'M QUOTING FROM CONN V. AMERICAN NATIONAL RED CROSS, 168 F.SUPP.3D 90, 95, WHICH QUOTES FDIC V. MEYER, 510 U.S. 471, 482.

M-01967 CONTINUED

- THUS, I HAVE LITTLE DIFFICULTY CONCLUDING THAT CONGRESS INTENDED TO WAIVE SOVEREIGN IMMUNITY AS TO USPS BY VIRTUE OF THE PRA. NONE OF THE ENUMERATED EXCEPTIONS THAT ARE LISTED BY THE SUPREME COURT IN LOEFFLER APPLY IN THIS CASE: SUBJECTING USPS TO PUNITIVE DAMAGES IS NOT INCONSISTENT WITH THE STATUTORY SCHEME. THE LANGUAGE OF THE PRA GAVE USPS THE STATUS OF A COMMERCIAL BUSINESS, WHICH IS CONSISTENT WITH CONGRESS'S INTENT THAT USPS OPERATE AS ONE. A COMMERCIAL BUSINESS IS LIABLE FOR PUNITIVE DAMAGES WHEN APPROPRIATE.

USPS IS NOT PROTECTED ANYMORE

- SOVERN IMMUNITY- THE USPS IS NOT PROTECTED BY SOVERN IMMUNITY
- WHENEVER A STEWARD, B-TEAM MEMBER OR ANY NALC ADVOCATE HAS A GRIEVANCE THAT HAS ANYTHING TO DO WITH MONITARY OR HIGHER COMPENSATORY REMEDIES, THESE TWO DOCUMENTS MUST BE IN THE FILE
- THIS WAS A HUGE WIN FOR THE NALC WHEN DEALING WITH MANAGEMENT'S NON-COMPLIANCE WITH GRIEVANCES IN THE PAST

CONTENTIONS

- MAKE A BASIC ARGUMENT THAT THE COURTS HAVE UPHELD, THAT THE UNION CAN ASK FOR AN ESCALATED MONITARY AWARD
- CONTEND THAT IN YOUR GRIEVANCE THERE WAS AN CASE FROM KINGSPORT THAT AN ARBITRATOR GRANTED AN ESCOLATED MONETARY AWARD OR AN AWARD FOR FUTURE COMPLINANCE AND MANAGEMENT ATTEMPTED TO VACATE THAT DICISION AND THE JUDGE RULED IN THE UNION'S FAVOR THAT PUNITIVE AWARDS CAN STAND AND THE UNION CAN ASK FOR IT AND CAN BE AWARDED IT
- THE C-34197 AND THAT THE COURTS DECSION IS BASED OFF OF THAT ARBITRATOR'S DECISION

USING THEM IN YOUR FILE

- STEP 4S AND M DOCUMENTS CAN BE PUT IN AT ANY TIME WITHOUT OBJECTION, SO UNION ADVOCATES YOU CAN ADD THESE TO YOUR FILE EVEN AT ARBITRATION. THEY MAY TRY TO OBJECT, BUT JUST TELL THE ARBITRATOR, HEY, LOOK, STEP 4S AND M DOCUMENTS CAN BE PUT IN AT ANYTIME.
- THEY ARE JUST LIKE CITES, SO PUT THIS CITE IN THE CASE FILE M-01967
- THIS IS A HUGE WIN FOR US AND IT SHOULD BE UTILIZED WHENEVER WE CAN USE IT