

C# 13221

CENTRAL REGION
REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)	GRIEVANT: Class Action
Between)	POST OFFICE: Lincoln Park, MI.
UNITED STATES POSTAL SERVICE)	CASE NO. CON-4B-C18572
And)	GTS-0012724
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO)	

BEFORE: Thomas J. Erbs, Arbitrator

APPEARANCES:

U.S. Postal Service - Glenn Lee - Manager Labor Relations
Union: - Paul Diebolt - Advocate

Place of Hearing: Lincoln Park, Michigan

Date of Hearing: August 16, 1993

Postal Service brief filed - September 1, 1993

AWARD: The grievance is sustained.

Date of Award: September 16, 1993



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OUTLINE OF CASE

The instant class action grievance was filed at Step 1 on December 19, 1992 when the Local Union felt that a previous Step 3 grievance resolution had not been followed. The instant grievance is as follows:

"On 12-8-92 Postmaster Fedea refused to abide by Step III decision CON-4B-C14663 of 9-30-92."

The original grievance in Case CON-4B-C14663 contended that on August 7, 1992 the Postal Service was ordering the carriers to "conform to non existent uniform regulations." The contention was that the Postal Service advised the employees that anklets and footies were not acceptable and could not be worn with shorts or culottes. The Carriers were directed to wear only prescribed uniform socks. The Union contended that there were no regulations in effect concerning the wearing of socks for culottes.

The Step 3 decision which constituted a settlement of that grievance, contained the following agreed upon resolution:

"Based on the facts and evidence presented, the parties agree that Postal Bulletin 21806, 1/9/92, printed a correction to PB21805, 12/26/91. Therefore, the parties shall apply the new language to the fact/circumstances in this case in order to resolve this grievance."

The Union then presented three bills for reimbursement for socks purchased but the Postal Service refused to reimburse the affected employees. The instant grievance was then filed.

The contentions in the instant grievance are as follows:

"Step III decision notes to apply Postal Bulletin 1-9-92 correction to Bulletin of 12-26-91. Correction doesn't refer to culottes, P.B. 6-27-91 says specific requirement does not exist. P.B. 1-9-92 says may wear authorized uniform sock - P.B. 12-26-91

says employees are encouraged to purchase. In Lincoln Park employees who wear coulottes were ordered to purchase certain socks."

The corrective action requested is that the Carriers who were required to purchase uniform socks "be reimbursed for losses incurred in obeying management order and all else deemed appropriate."

The original grievance which was settled at Step 3 requested that Management rescind all orders given Carriers in Lincoln Park which did not conform to regulations and that the Carriers be reimbursed for undue time and expenses incurred in obeying "Management at Lincoln Park for non-existent uniform regulation."

Evidence indicated that for some time female Carriers had been wearing anklets and footies with coulottes. The Supervisor of Customer Service testified, however, that when she was a Carrier several years ago she had been sent home for wearing anklets. There was no other evidence that any Carrier received discipline for wearing certain socks. Apparently some time in early summer 1992 a male Carrier complained about the female Carriers not being required to wear a uniform. The Supervisor also noticed various female Carriers wearing footies. It is acknowledged that some service talks were then held concerning wearing of socks. This occurred sometime after a postal bulletin was issued concerning the new uniform program involving socks.

In December of 1991 postal bulletin 21805 indicated that new uniform socks had been approved to wear with delivery and motor

vehicle service uniforms. Certain socks were approved for purchase effective March 1, 1992. They were listed as a blue gray uniform sock and a white uniform sock with two navy rings at the top. The blue gray sock in crew length and calf length is to be worn with trousers, culottes or shorts. The white socks, in crew or calf length, are to be worn with coulottes and walking shorts only. The bulletin also indicated that the black knee length hose would be obsolete effective December 1, 1993. Employees were then encouraged to purchase and wear the new socks as soon as possible "to bring uniformity to the program."

On January 9, 1992 a correction was issued, in Bulletin 21806, to the above listed postal bulletin 21805. For skirts and jumpers delivery personnel "may wear neutral colored nylon stockings or the authorized uniform socks". ELM section 933.22 issued on 5/1/89 indicated that the required items for warm weather contained two options. Option No. 1 listed "uniform slacks, skirt or coulottes. Skirts/coulottes may only be worn with black knee length socks or neutral colored hose". However, a revision was issued on August 10, 1989 which deleted the last sentence referring to black knee length socks or neutral colored hose. The required items for warm weather, as appeared in ELM 933.22 during the period are for Option No. 1 "uniform slacks, skirt or coulottes." For Option #2 it is: "Walking shorts and black knee length socks.

Under ELM 933.1 under Accessories, black knee length socks are listed for both men and for women. Evidence indicated that

many of the men wore, under pants, other than black knee length socks, and that many of the women have for years worn other than black knee length socks when wearing coulottes or slacks.

The local branch president testified that certain of the female employees were advised that they were required to buy the new uniform socks or face discipline. Two of the three employees who purchased the socks testified that they were so directed by Management. One employee testified that she was told on Friday that she had to wear the new socks by Monday or she would be faced with discipline. All three employees had already exhausted their uniform allowance for the year.

The Carriers testified that they had been wearing anklets or footies with coulottes for some period of time. Only after the service talks concerning the new uniforms were they advised by supervision that they were required to get the new socks or face discipline. Two of them bought socks at an authorized uniform dealer and another, because she was paying out of her own pocket, secured similar socks at a discount store. None of the Carriers submitted their bills for reimbursement to Management as they thought that since they were already out of their uniform allowance they would not be reimbursed. The Carriers testified that they bought when they did only because they were required to do so by Management. They were not given the option of waiting until their new uniform allowance was issued.

The Supervisor of Customer Service stated that she did not receive a list of employees who wanted to be reimbursed although

in the grievance procedure the receipts were presented. She had been advised verbally that some employees wanted to be reimbursed but she had not received any documentation. She acknowledged that she told one or more of the Carriers that footies could not be worn. She told one of the Carriers that only the new white socks or the black knee highs were acceptable. She denies that the employees were forced to buy new socks. She states, however, the employees were given two weeks to purchase either the new socks or the black knee highs. She acknowledged that the three Carriers had spent their uniform allowance prior to the August 7 directive regarding the footies and the anklets.

The Union president testified on rebuttal that the uniform change came about between the time that the subject employees had any uniform allowance. These Carriers had to use their own funds to buy something that was being required by the Postal Service before the new deadline. Since the Postal Service wanted them to be in a different uniform it was the Service's obligation to provide that uniform.

CITATIONS

The parties have cited various provisions of the National Agreement including Article 3, Management Rights; Article 15 Grievance and Arbitration; Article 19 Handbooks and Manuals; and Article 26 Uniform and Work Clothes. Various chapters of the ELM were also cited including Chapters 930, 931, 933, 935 and 936 and various Postal Bulletins.

ISSUE

The parties agreed that the issue is as follows:

Did the Postal Service violate Article 15 of the National Agreement by failing to abide by the Step 3 decision of grievance CON-4B-C14663 (LP-92-148) and/or did Postal Service instructions regarding uniform sock wear violate the National Agreement and/or Section 930 of the Employee & Labor Relations Manual? And if so, what is the appropriate remedy?

UNION CONTENTIONS

While the Postal Service may prescribe a uniform dress to be worn by the Carriers that right is not without limitation. It must be exercised consistent with applicable laws and regulations and in accordance with Article 26 of the National Agreement. The evidence indicated that the Management at Lincoln Park issued inappropriate instructions requiring the wearing of certain types of socks. These instructions went beyond the scope of Management's authority as the parties set forth in the ELM. Such instructions were arbitrary and capricious. The local Management admitted that Carriers were required to wear white or blue gray socks before they were required to do so by the existing regulations. The regulations in effect in 1992 did not specify any specific sock requirements for either male or female Carriers except that black knee socks were required when wearing walking shorts. There was no other specific requirement, nor was there any requirement for female Carriers wearing skirts or coulottes.

In 1992 the Postal Service changed the uniform. There was a

wear out period which would continue until December 1, 1993. Even though new socks were authorized on March 1, 1992 employees were not required to purchase the socks but only were encouraged to do so. There was no justification for local Management to require the employees to wear the new socks in 1992. There was no right to attempt to establish new local requirements which were not in the ELM. As a result of the inappropriate action of the Postal Service several employees had to purchase socks with their own money without reimbursement through the uniform allowance program. The only reason these socks were purchased at that time was because of the threat of discipline that accompanied the order.

Management should have allowed the employees to adhere to the old practice through the prescribed wear out period. The Union requests that the grievance be sustained and that the affected Carriers be reimbursed. The Postal Service should also be advised to cease and desist attempting to enforce the new sock rule until the appropriate wear out period expires.

POSTAL SERVICE CONTENTIONS

The provisions of the National Agreement and ELM Chapter 930 indicate Management and employee's responsibilities as to purchasing and wearing uniforms. Even though there are no specific requirements as to socks with skirts or culottes there is a requirement to wear black knee length socks with shorts. There is also the objective of the uniform program to present to the public a high standard of appearance and a professional

image. Supervision is to continually observe the appearance of Carriers and are to insure they are properly attired. The wearing of footies and anklets does not portray a clean, neat appearance which supervision has a right to expect and to correct.

The Supervisors enforced the uniform appearance goal. There was no evidence presented that the employees lost anything by being required to wear a proper uniform. There is no authority to purchase items from non approved suppliers. Nor was their evidence that the employees had exhausted their allowance at the time. The allowance is to be used to create a Carrier wardrobe over time and not all at once. The employees should have been wearing the proper uniform in accordance with Postal Bulletin 21792(6/27/91). They chose not to wear the proper uniform. The Union is attempting to get benefits not authorized by the contract. For this reason the grievance should be denied.

DISCUSSION

As both parties have argued, Article 26 sets out certain parameters in regard to the uniform to be worn by certain postal employees. Article 26 states that employees shall be furnished a uniform and that they shall be reimbursed for the purchase of such uniform. The parties have then negotiated a uniform allowance and the procedures to be followed in the administration of that allowance.

In the instant case the three (3) employees who, by this grievance seek reimbursement, had exhausted their uniform allowance prior to the purchase of the socks which are at issue.

Management's witness acknowledged this fact. All of these employees were more than three months away from the issuance of their new uniform allowances.

The Union has acknowledged the Postal Service's right to change the applicable uniform for affected Carriers. It argues, however, that if the uniform change is made without sufficient time to secure the uniform, then it is the responsibility of the Postal Service to either supply the uniform or reimburse the employees who secure the uniform on their own. Management obviously disagrees with the Union's position and relies in large part on its right to police the appearance of the Carriers. In the Arbitrator's opinion the case is not as clear cut as either side suggests.

The Arbitrator has neither found nor been cited to any specified requirement which defines, before December 1, 1993, the exact type of socks to be worn by employees wearing culottes. Admittedly the Postal Service has argued that the only acceptable socks were the black socks, yet the evidence did not support that argument, at least insofar the Lincoln Park station was concerned. True, one Management witness stated that years ago she had been sent home for wearing footies. On the other hand the Union's evidence, which was not rebutted by Management, indicated that female Carriers at this station had been wearing culottes with footies or anklets for a considerable period of time, all without objection. The Arbitrator credits these witnesses and must accordingly find that footies and/or anklets

were an accepted part of the uniform at Lincoln Park for some period of time.

It is noted that in 1991 a more specific sock directive was issued. Management quotes from a June 1991 Postal Bulletin (21792) which was not in evidence. Allegedly this Bulletin states that the National Uniform Committee intended that employees wear either black knee length, neutral colored hose or a color coordinated sock. Bright socks were not allowed. Subsequently the December 1991 Postal Bulletin was issued requiring neutral colored hoses with shorts and jumpers and blue-gray or white socks or black knee length hose. However, a correction was issued which left off any reference to a particular type of sock to be worn with skirts or culottes. Hence in August, 1992 there was no specific regulation. With such an open-ended uniform requirement, coupled with the practice at this station, the Arbitrator can well understand that the Carriers, at least in this case, were led to believe that the wearing of anklets or footies with culottes was an acceptable adjunct to their uniform.

It appears clear that it was only after the new uniform regulations were issued, and after a complaint from a male Carrier, that local management unilaterally decided to accelerate the new sock requirements. Nevertheless, the regulations which were issued indicated that although the new socks were authorized in March of 1992, there was also to be a fairly long phase-in period. There was no mention in that directive as to discipline

being issued for non-compliance with the new regulations prior to December of 1993.

Thus, as laudable as uniformity in appearance may be among the Carriers, this was not a specific requirement that governed the issue presented herein, and Management's case can only extend so far on this point. Even the June 1991 Postal Bulletin references that there are no specific requirements for culottes. Then it goes on to express the "intention" of the National Committee in regard to socks but did not go so far as to forbid anything but bright socks. Management went beyond encouraging employees to comply with the "intention" expressed. Not only did local Management direct these employees to secure the new socks (which the Arbitrator believes did in fact occur) but Management also threatened discipline if the Carriers did not have the new socks within a very short period of time. Local Management should have known, or at least had the ability to know, that the affected Carriers no longer had any uniform allowance for the particular period involved. From an equitable standpoint Management might have considered delaying the threat of discipline until such time as the new uniform allowance for these Carriers was in place. Yet it gave no such consideration to the problem, nor did it even give a hint that such a possibility might be available. Instead, it issued the directive coupling the directive with the threat of discipline.

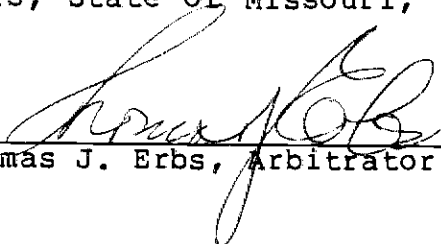
Management's case must therefore be judged on the propriety of this decision. The Arbitrator agrees that if employees have

exhausted their uniform allowance the amount spent on uniforms in excess of the allowance is not reimbursable. This conclusion, however, is based on some rather common sense principles. For example it must be assumed that employees who are utilizing their allowance would have some discretion as to how they would spend the same. They would also have some forewarning as to the items they were required to purchase, at a particular time. This, as the Postal Service argues, allows them to build up a career wardrobe. Applied here that discretion was utilized at the time the employees received their uniform allowance at the beginning of 1992. By imposing a threat of discipline on the purchase of a new uniform item, coupled with an immediate direction to conform to local Management's policy, the Carriers lost their opportunity to exercise discretion in regard to the uniform purchase. This occurred without any corresponding consideration such as the phase-in period recognized nationally.

Neither party has cited to the Arbitrator any decisions on matters even close to the facts presented in this case. However, after reviewing the unique circumstances of this case, and based solely upon the facts that are presented in this case, it is the opinion of the Arbitrator that the Postal Service issued inappropriate directives to these three (3) employees. As a result of those inappropriate directives coupled with the threat of discipline, these employees were required to spend their own money, prior to the time when it would otherwise be required. Management's actions are therefor deemed to be in error.

For these reasons it is the judgement of the Arbitrator that the grievance must be sustained. The bills that were submitted in the first grievance, and which were in evidence in this case, constitute expenses imposed upon the three (3) Carriers in error. The Postal Service is therefore ordered to reimburse the three (3) affected Carriers the amount of such expenditures. Those reimbursements shall not be counted against their current clothing uniform allowance.

Signed in the County of St. Louis, State of Missouri, this 16th day of September, 1993.



Thomas J. Erbs, Arbitrator