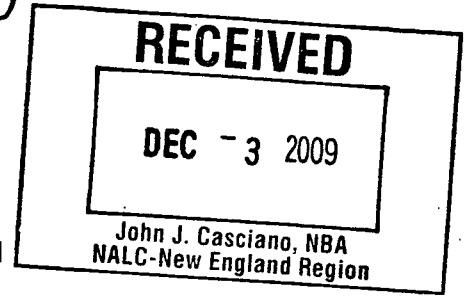


28539A-B



REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

Between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

GRIEVANCE: Class Action
POST OFFICE: Milford, NH

CASE Numbers:
USPS: B06N-1B-C 09253962, 09253970
NALC: M0903, M0904
DRT 14-136290, 14-136295

BEFORE: Sherrie Rose Talmadge, Esq., ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Thomas A. Caiazzo, Labor Relations Specialist
For the Union: William Bothwell, Branch Vice President
Place of Hearing: 10 Celine Drive, Nashua, NH
Date(s) of Hearing: October 6, 2009
Post Hearing Briefs: October 21, 2009
Date of Award: December 2, 2009
Relevant Contract Provisions: Articles 19, 12 and 7
Date of Contract: 2006 - 2011
Type of Grievance: Contract

AWARD SUMMARY

Management violated Article 19 of the National Agreement when they altered Milford City Carrier clock rings for the period 2003 – 2008. The grievances are sustained. For a remedial award I find:

- 1. The Service agreed, based on the evidence, that all the carriers who were adversely impacted by the altered clock rings are entitled to a make whole remedy for the period 2003 – 2008; the details to be worked out by the parties. Thus, all employees adversely impacted by the altered clock rings are to be made whole.
- 2. Management at the Milford Post Office engaged in a pattern of intentional, repeated and flagrant violations of the contract when they altered the City Carrier clock rings for the period 2003 – 2008. Management's violations were so egregious over a period of many years that punitive damages are warranted to deter the Service from further clock ring violations. Thus, I award \$1500.00 to all current career city carriers at the Milford, New Hampshire PO.
- 3. As a result of Management's contractual violations, part-time flexible carriers West and McGaughey were not converted to full-time regular status. Based on the documentation presented, I conclude that PTF carriers West and McGaughey are qualified for conversion to full-time status. I find that PTF carriers West and McGaughey are to be converted to full-time regular carriers, effective 30 days from the date of the award, into the two positions currently being with-held under Article 12.

Pursuant to the request of the parties, the arbitrator will retain jurisdiction for the implementation of the remedial order.

Sherrie Rose Talmadge
Sherrie Rose Talmadge, Esq., Arbitrator

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STIPULATED ISSUES

1. Did Management violate Article 19 of the National Agreement when they altered Milford City Carrier clock rings for the period 2003 – 2008?
2. If so, what shall the remedy be?

STIPULATED FACTS¹

1. The Milford, New Hampshire Post Office has a complement of seven (7) full-time carriers and two (2) part-time flexible carriers.
2. Management stipulated that City Carrier clock rings at the Milford, New Hampshire Post Office were altered, as provided for in the exhibits.
3. Over the six year period at issue (2003 -2008) Supervisor Steve Colen repeatedly changed the beginning and end time of all the city carriers.
4. For carriers who were out after 5 p.m., Colen altered their clock rings to reflect that they had returned to the office prior to 5 p.m. to avoid showing up on the after 5 p.m. report.
5. Supervisor Colen also deleted one day of overtime to avoid paying the penalties outlined in Article 8.4.D (penalty overtime pay).
6. Supervisor Colen changed the time of the carriers' lunch hour manually extending the lunch period to avoid overtime payments.
7. When carriers worked six hours or less, Colen would input a lunch, thereby decreasing the total pay time to the carrier by the amount of the lunch time input.
8. Colen frequently clocked out a part-time flexible carrier as End Tour and clock the carrier back 50 units later as Begin Tour to avoid overtime or paid time.
9. In total, there were 805 instances of pay being taken away from the carriers over the six year period (2003 – 2008).
10. Supervisor Colen also put carriers in for training time when they were actually working. For example, in 2005 there were over 9 weeks of training time recorded although there were only seven full-time letter carriers and two part-time flexible carriers. Falsely listing the carrier training time negatively affected the evaluation of the routes.
11. The carrier statements indicated that they did not take the time as recorded.

¹ At the hearing the parties agreed to consolidate the two cases and present the case based on stipulations of fact and documentary evidence. At the conclusion of the hearing, the parties submitted post-hearing briefs.

Arbitration decision continued.

12. The TACS reports reflected that Supervisor Colen altered the carriers' time, often making the alterations before anyone had come to work.
13. Management's actions led to a loss of employee pay.
14. In 2006, the Milford Post Office had six full-time routes, an auxiliary route and collections.
15. In 2006, PTF Bob West worked 8 hours per day, 40 hours per week, 5 days per week for six months on the vacant swing route performing letter carrier duties.
16. In 2006, when the supervisor inappropriately deleted carrier time and credited training time, the auxiliary route was negatively impacted.
17. In 2009 the auxiliary route was subsequently converted to a full-time 8 hour assignment and with held under Article 12.
18. In 2009 the two part-time flexible carriers are Bob West and Brian McGaughey.
19. Since 2007, there have been two carrier positions being with held under Article 12.
20. Management agrees, based on the evidence, that all the carriers who were adversely impacted by the altered clock rings are entitled to a make whole remedy for the period 2003 – 2008; the details to be worked out by the parties.

POSITIONS OF THE PARTIES

UNION'S POSITION

These two cases deal with the altering of clock rings in Milford, NH. Changing the clock rings affected the carriers in three ways: 1) the carriers had pay taken from them in many forms as stipulated at the hearing and the Service agreed to make the carriers whole; 2) PTF carriers Bob West and Brian McGaughey did not qualify for full-time positions; and 3) City Route 7 remained an auxiliary assignment.

It is undisputed that Article 12 was invoked in March 2007, and thus any residual vacancies or any conversions pursuant to Article 7.3.C would be held as a result. Had the clock rings not been altered, the following would have occurred. Carrier Bob West worked as a Utility Carrier eight hours per day five days a week for a period of six months. This would have created the need for the Senior PTF to be converted to full-time under the provisions of Article 7.3.C, before Article 12 was implemented. Additionally, the times on City 7, then an auxiliary route, would have met the criteria to convert City 7 to a bid assignment, thus, converting PTF McGaughey to full-time pursuant to Article 7.3.D. It has already been stipulated that City 7 was made a bid assignment under the Modified Interim Route Adjustment Process (MIARAP) in 2009.

Arbitration decision continued.

The Union has demonstrated that these events should have occurred in 2005 and 2006. The Union has also shown that the two PTFs should have been converted to full-time in accordance with Articles 7.3.C and 7.3.D prior to Article 12. The only way to make these carriers whole is to convert them to full-time status based on office seniority; one carrier to be assigned as a utility carrier and the other City 7.

A punitive remedy is warranted in this matter in which there was harm to the Grievants and the acts were continuous and egregious. Over a six year period Supervisor Steve Colen and Postmaster Dean Mottard deliberately made 805 changes to carriers' pay and thousands of changes and modifications in clock ring codes. In one year there were several weeks of training time that affected the carriers' jobs in a seven route office. These were egregious violations. In addition, each carrier was harmed. The Service agreed to make the carriers whole for all lost wages. The Union asks, in addition to the make whole remedy for lost wages, that PTF Bob West and Brian McGaughey be converted to full-time employees and assigned the two vacant positions in Milford, NH. The Union also requested a punitive remedy of \$3000.00 be paid to all current carriers in the Milford, NH Post Office.

POSTAL SERVICE POSITION

Management stipulated that, based on the evidence, that all the carriers who were adversely impacted by the altered clock rings are entitled to a make whole remedy for the period 2003 – 2008; the details to be worked out by the parties. Although Management agreed to a make whole remedy, the Service argued that a punitive remedy was not warranted. When fashioning a remedy the arbitrator has a responsibility to the parties' ongoing relationship. An inappropriate or overly generous award can severely damage the parties' relationship by creating unreasonable expectations of remedy that render the grievance portion of the grievance-arbitration procedure meaningless.

National Arbitrator Snow indicated his reluctance to award punitive damages even when a violation is willful and repeated, stating (Case W1C-5F-C 4734):

It is recognized that some arbitrators have awarded punitive damages when a party's violation of an agreement has been constant and repeated or malicious. That approach, however, has not been consistent with the common law which has taught that, no matter how reprehensible a breach, punitive damages which were in excess of an injured party's lost expectation generally have not been awarded for a breach of contract.

Arbitration decision continued.

The contract requires the union to specify exactly what they seek as a remedy, and they have not done so during the grievance procedure in terms of punitive damages. Even if the arbitrator agrees with the Union's position, it does not mean that the arbitrator may exercise her own "brand of industrial justice" when it comes to awarding a remedy. The arbitrator is bound by the terms of the contract. Punitive remedies have no foundation within the four corners of the collective bargaining agreement. The fact circumstances in this case do not rise to the definition of arbitrary and capricious. Thus, a "make whole" remedy is the appropriate award in this case.

The Service also maintained that the Union did not fully develop the evidence on the conversion of the part-time flexible carrier positions to full-time. At this time the office is currently under Article 12 and, therefore, conversion is not appropriate.

DISCUSSION

In this case the parties acknowledged that Management violated Article 19 of the National Agreement when they altered Milford City Carrier clock rings for the period 2003 – 2008. The Service stipulated that, based on the evidence, that all the carriers who were adversely impacted by the altered clock rings are entitled to a make whole remedy for the period 2003 – 2008; the details to be worked out by the parties.

The remaining issue is the appropriate remedy for the Service's violation of the National Agreement. The Union asserted that Management at the Milford Post Office knowingly and repeatedly violated the contract when they altered the City Carrier clock rings for the period 2003 – 2008 and, thus, Management's actions were arbitrary and capricious. Specifically, over a six year period Supervisor Colen and Postmaster Mottard deliberately made 805 changes to carriers' pay and thousands of changes and modifications in clock ring codes. Moreover, in one year there were several weeks of training time that affected the carriers' jobs in a seven route office. The Union argued that, in addition to the make whole remedy for lost wages, part-time flexible carriers Bob West and Brian McGaughey be converted to full-time employees and assigned the two vacant positions in Milford, NH. The Union also requested a punitive remedy of \$3000.00 be paid to all current carriers in the Milford, NH Post Office that would serve to deter the Employer from engaging in this improper practice.

Although arbitrators have broad powers to fashion an effective remedy, they generally follow the principle that damages should be compensatory, i.e. correspond to the harm suffered. To be compensatory there must be a causal relationship between

Arbitration decision continued.

the company's violation of the agreement and the loss claimed by the employee. An award exceeding the monetary loss the injured party suffered as a causal result of the contract breach is considered punitive. In this case, in addition to the make whole remedy corresponding to the harm suffered, the Union requested punitive damages.

Arbitrator Carlton Snow has written in USPS and APWU, [Case No. W1C-5F-C 4734, (1987)]:

It is recognized that some arbitrators have awarded punitive damages when a party's violation of an agreement has been constant and repeated or malicious. That approach, however, has not been consistent with the common law which has taught that, no matter how reprehensible a breach, punitive damages which were in excess of an injured party's lost expectation generally have not been awarded for a breach of contract. (Citations omitted.) As the U.S. Supreme Court has taught, "If the contract is broken, the measure of damages generally is the same, whatever the cause of the breach." (See, Globe Refining Company v. Landa Cotton Oil Company, 190 U.S. 540, 544 (1903).

Some arbitrators have concluded that punitive damages should be awarded only, if at all, when a party's conduct has been willful, malicious and in bad faith. [See Arbitrator Irene Donna Thomas in APWU and USPS, (Case Nos. A98C1AC 99211670 – 99664) (2000)]. Thomas found that an award of punitive damages to bargaining unit members for observing a supervisor perform bargaining unit work, without showing harm to the grievants, was impermissible.) Arbitrator Erbs (Case No. C4C-4Q-C 22321) denied punitive damages in a case in which there was no showing by the Union that there was anything other than an inadvertent, administrative error which would require compensation for this overtime. Although Erbs stated his reluctance to award punitive damages in this type of situation without clear contractual authority, he noted, "If there were a pattern of intentional or flagrant violations of the contract in this regard by the Postal Service then, in this Arbitrator's opinion, punitive damages may well be appropriate".

Where the contractual violation is repeated or intentional arbitrators are more likely to award punitive damages. In a case that involved the Service's refusal to provide any information in response to the Union's information request to process a grievance, Arbitrator Leonard C. Bajork held that such a refusal breached the covenant of good faith and fair dealing. Bajork concluded that the Service's refusal was flagrant and malicious behavior that merited a punitive monetary award. [NALC and USPS, Case No. G94N-4G-C 96045740 (1999)].

Arbitration decision continued.

In the present case I find that the Management at the Milford Post Office engaged in a pattern of intentional, repeated and flagrant violations of the contract when they altered the City Carrier clock rings for the period 2003 – 2008. Specifically, over a six year period Supervisor Colen and Postmaster Mottard deliberately made 805 changes to carriers' pay and thousands of changes and modifications in clock ring codes in violation of the National Agreement resulting in loss of pay to the carriers. Moreover, in one year there were several weeks of training time that affected the carriers' jobs in a seven route office. Supervisor Colen put carriers in for training time when they were actually working. For example, in 2005 there were over 9 weeks of training time recorded although there were only seven full-time letter carriers and two part-time flexible carriers. Falsely listing the carrier training time negatively affected the evaluation of the routes. In this case Management's violations were so egregious over a period of many years that punitive damages are warranted to deter the Service from further clock ring violations. Thus, I award \$1500.00 to all current career city carriers at the Milford, New Hampshire Post Office.

I also find that as a result of Management's contractual violations part-time flexible carriers West and McGaughey were not converted to full-time regular status. In 2006, PTF Bob West worked as a utility carrier eight (8) hours a day, forty (40) hours per week, five (5) days per week for six months on the vacant swing route. This would have created the need for the senior PTF to be converted to full-time under the provisions of Article 7.3.C, before Article 12 was implemented. As a result, West should have been converted to full-time status pursuant to Article 7.3.C. In addition, in 2006, when the supervisor inappropriately deleted carrier time and credited training time, the auxiliary route, which otherwise would have been an 8 hour route, was negatively impacted. The times on the auxiliary route, now City 7, would have met the criteria to convert the route to a bid assignment. Thus, but for the Service's contractual violations, PTF McGaughey should have been converted to full-time regular status pursuant to Article 7.3.D because in 2006 the auxiliary route would have been an 8 hour route. Since 2007 the Service has with-held two carrier positions pursuant to Article 12. Based on the documentation presented, I conclude that PTF carriers West and McGaughey were qualified for conversion to full-time status prior to the implementation of Article 12. Therefore, I find that part-time flexible carriers West and McGaughey are to be converted to full-time regular carriers, effective 30 days from the date of the award, into the two positions currently being with-held under Article 12.

AWARD

Management violated Article 19 of the National Agreement when they altered Milford City Carrier clock rings for the period 2003 – 2008. The grievances are sustained. For a remedial award I find:

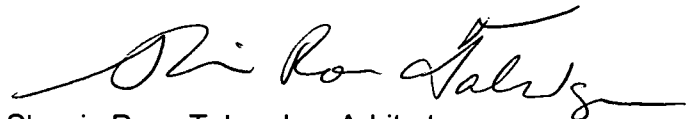
1. The Service agreed, based on the evidence, that all the carriers who were adversely impacted by the altered clock rings are entitled to a make whole remedy for the period 2003 – 2008; the details to be worked out by the parties. Thus, all employees adversely impacted by the altered clock rings are to be made whole.

2. Management at the Milford Post Office engaged in a pattern of intentional, repeated and flagrant violations of the contract when they altered the City Carrier clock rings for the period 2003 – 2008. Management's violations were so egregious over a period of many years that punitive damages are warranted to deter the Service from further clock ring violations. Thus, I award \$1500.00 to all current career city carriers at the Milford, New Hampshire Post Office.

3. As a result of Management's contractual violations, part-time flexible carriers West and McGaughey were not converted to full-time regular status. Based on the documentation presented, I conclude that PTF carriers West and McGaughey are qualified for conversion to full-time status. Therefore, I find that PTF carriers West and McGaughey are to be converted to full-time regular carriers, effective 30 days from the date of the award, into the two positions currently being with held under Article 12.

Pursuant to the request of the parties, the arbitrator will retain jurisdiction for the implementation of the remedial order.

Respectfully submitted by:



Sherrie Rose Talmadge, Arbitrator