C-31908

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	*	
between:	*	Grievant: Class Action
United States Postal Service	*	Post Office: Gretna, LA
and	*	USPS Case No: G11N-4G-C 14059080
National Association of Letter Carriers, AFL,CIO	*	NALC Case No: J-167-13

BEFORE: Lawrence Roberts, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Willie W. Collier

For the Union: Corey Walton

Place of Hearing: Postal Facility, Gretna, LA

Date of Hearing: March 27, 2014

Date of Award: April 22, 2015

Relevant Contract Provision: Article 15

Contract Year: 2011

Type of Grievance: Contract

Award Summary:

This class action grievance was resolved in part by the Step B Team. The Step B Team was unable to agree upon the remedy and declared an impasse. The evidence presented in this case supports the Union position and therefore their requested remedy in this matter is hereby granted.

Lawrence Roberts, Panel Arbitrator

SUBMISSION:

This matter came to be Arbitrated pursuant to the terms of the Wage Agreement between United States Postal Service and the National Association of Letter Carriers Union, AFL-CIO, the Parties having failed to resolve this matter prior to the arbitral proceedings. The hearing in this cause was conducted on 27 March 2015 at the postal facility located in Gretna, LA. Testimony and evidence were received from both parties. A transcriber was not used. The Arbitrator made a record of the hearing by use of a digital recorder and personal notes. The Arbitrator is assigned to the Regular Regional Arbitration Panel in accordance with the Wage Agreement.

OPINION

BACKGROUND AND FACTS:

This is a class action grievance filed on behalf of Letter Carriers working at a Gretna, LA postal facility. The Step B Team resolved the case in part and declared an impasse in part. The impasse was reached at the remedy phase of this dispute.

In part, the Step B Team "has agreed to Impasse this grievance in part and Resolve this grievance in part." And this Step B statement precedes the following:

- **The Step B Team agrees that Management violated Article 41.2.B.4 of the National Agreement and M-01819 by refusing to allow CCA's Ronnie Bartholomew, Anna Medina, Donald Charles, Carlos Smith, Dave Lemon, and Zeinna Weber by refusing to allow CCA's to work their hold down routes as posted. Management is issued a cease and desist.**
- **The Step B Team agrees that Management violated Pre-Arbitration Settlements G11n-4G-C 13233049/Ronnie Bartholomew, G11N-4G-C 132334272/Anna Medina, G11N-4G-C**

13233040/Donald Charles, G11N-4G-C 13233003/Carlos Smith, G11N-4G-C 13233038/Dave Lemon, and G11N-4G-C 13233049/Zeinna Weber via Article 15.3.A of the National Agreement when Management did not allow these CCA's to work their hold down routes as posted. The Step B Team agrees that this continued to occur after the cited Pre-Arbitration Settlements were agreed to by USPS Representative James Oliver and NALC NBA Region 8 Representative Pete Moss on December 12, 2013. Management has issued a cease and desist.

- **The Step B Team could not come to a consensus on the proper compensatory remedy for cited grievants due to Management violating the six (6) Pre Arbitration Settlements dated December 12, 2013, so the Step B Team has decided to Impasse this portion of this grievance.**

The Union's requested remedy in this matter is as follows:

".. that management cease and desist and now and in the future allow the CCA to work their opt assignment as scheduled. The union request that CCA's D. Charles, D. Lemon, A. Medina, C. Smith, R. Bartholomew and Z. Weber be paid 10 dollars a day until there hold was broken, voluntarily reassigned, started working the hold down as scheduled or until the present, whichever comes first or whatever an arbitrator deems appropriate."

The above requested remedy was extracted from the Union's Step A "Remedy Requested," a part of Joint Exhibit 2. The Employer did not challenge the Union's requested remedy at the Step A level.

Instead, the Employer at arbitration contends the request of the Union should be denied in its entirety.

Obviously, the Parties were unable to resolve this dispute during the prior steps of the Parties Grievance-Arbitration Procedure of Article 15. The Step B Team declared the impasse mentioned above on 16 July 2014 and the matter was referred to arbitration.

It was found the matter was properly processed through the prior steps of the grievance procedure. Therefore, the dispute is now before the undersigned for final determination.

At the hearing, the Parties were afforded a fair and full opportunity to present evidence, examine and cross examine witnesses. The record was closed following the presentation of oral closing arguments by the respective Advocates.

JOINT EXHIBITS:

1. Agreement between the National Association of Letter Carriers Union, AFL-CIO and the US Postal Service.
2. Grievance Package

UNION'S POSITION:

It was initially pointed out by the Union that both Parties at the B-Team have acknowledged a violation of the Parties Agreement. Therefore, the Union acknowledges this matter addresses remedy only.

The Union relies on the relevant language of the Joint Contract Administration Manual in support of their position in this matter regarding remedy.

And it is the argument of the Union that Management's actions clearly meet the criteria mentioned above.

The Union insists the evidence will show non-compliance with past decisions is the norm rather than the exception at this facility.

Therefore, the Union asks that the Union's requested remedy be granted in this matter.

COMPANY'S POSITION:

The Agency contends the Union's requested remedy is not in compliance with the Parties Agreement or the Joint Contract Administration Manual, is unreasonable and too harsh.

The Employer goes on to challenge individual highlights made by the Union in their opening statement at this hearing.

It is the position of the Service that the Union's requested remedy is either not in compliance with the contract or the JCAM, unreasonable and too harsh.

And on that basis, Management requests the Union's requested remedy be denied.

THE ISSUE:

Whether or not the Union's requested remedy is appropriate. If not, what should the remedy be?

PERTINENT CONTRACT PROVISIONS:

ARTICLE 15

DISCUSSION AND FINDINGS:

Initially, I would like to point out the undersigned has already ruled in an almost identical matter in **Case Number K11N-4K-C 13374003, dated June 29 2014**. The facts relative to the relevant portions of the respective arguments, last June and this instant case, are identical to the point the same language

of the Parties Agreement is applicable in the same fashion. There was a similar occurrence in each instance. The Employer failed to offer any challenge to the Union's requested remedy at the Step A level. And regardless of facts or circumstance, this is always fatal to any Employer challenge of remedy.

The Union's Step A requested remedy stands. The Employer failed to offer any challenges to the Union's requested remedy at Step A. And as again, explained below, the language of the Parties Agreement is absolute. Any argument and fact(s) must be developed and exchanged in writing by and between the Parties at the Step A level. If any fact or argument is not raised by either Party at that Step A Level, the respective position of either Party then becomes fixed, based on the evidence and arguments raised at Step A. And that rationale is applied to this instant case.

Contentions were made by the Agency regarding the Union's requested remedy at this hearing. The Employer Advocate argued aggressively and assertively that the remedy requested was punitive and not allowed by the Wage Agreement. The Employer Advocate asked to call the Formal A Representative. That request was granted by the undersigned. However, the Formal A Representative was unable to dispute the Union's claim.

The language of the Parties Agreement is absolute. Any Employer contention not cited at Step A cannot be considered. And it was obvious to the undersigned the Employer did not oppose any remedy presented by the Union at that Step A level.

Controlling in this instant case is the language found in Article 15.2 Formal Step A (d), wherein both Parties are required to make a full and detailed exchange at the Formal Step A. Importantly, it all must be reduced to writing. As I'm sure the Parties are aware, no new facts or argument(s) may be introduced beyond that Formal Step A point. ***The Step B Team may further argue the relevance of any Step A contention***, however, new argument, objections or contentions beyond Formal Step A cannot be considered.

The Union introduced a requested remedy at the Formal Step A and it became part of the record. There was no objection raised by the Employer at the Formal Step A. In this case, "Management Contentions" only addressed the merits of the case. The Officer In Charge, who authored "Management Contentions", failed to offer any challenge to the Union's requested Step A remedy.

And on that basis, I am of the considered opinion the Employer is now barred from coming to arbitration and arguing

that a requested Formal Step A remedy requested by the Union had already been granted, was unreasonable, inappropriate or harsh. Instead, again, in my view, the Employer should have made any such argument(s) regarding any requested remedy at the Formal Step A level.

It also seems the Union, as well, may have somewhat expanded their request for relief at this hearing. However, with that in mind, I will note, the remedy granted by this Award shall be based in accordance with the "Remedy Requested" cited above reading as follows:

> **".. that management cease and desist and now and in the future allow the CCA to work their opt assignment as scheduled. The union request that CCA's D. Charles, D. Lemon, A. Medina, C. Smith, R. Bartholomew and Z. Weber be paid 10 dollars a day until there hold was broken, voluntarily reassigned, started working the hold down as scheduled or until the present, whichever comes first or whatever an arbitrator deems appropriate."**

And even though the Parties settled the dispute itself, the rules set forth in Article 15 do not change. Article 15 creates an even ground that allows both Parties an equal opportunity to present their case. And any suggested or requested remedy becomes part of that record. However, once the dispute extends beyond that Step A point, any new argument, including remedy, becomes moot. This is according to Article 15.2 Formal Step A (d) which states:

> **"At the meeting the Union representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Articles 17 and 31. The parties' representatives may mutually agree to jointly interview witnesses where desirable to assure full development of all facts and contentions. In addition, in cases involving discharge either party shall have the right to present no more than two witnesses. Such right shall not preclude the parties from jointly agreeing to interview additional witnesses as provided above."**

Both Parties are unambiguously required to "**make a full and detailed statement of all facts…..**" It is clear the Employer did not oppose the Union's requested remedy in any way at the Formal Step A. Either Party cannot sandbag until Step B and present their entire case. Therefore, any argument made by the Employer at arbitration regarding remedy, simply cannot be considered.

And with that in mind, I have no other choice than to grant the Union's requested Formal Step A remedy request. It's simply a basic tenet of the Parties Agreement. There are certain principles that cannot simply be offset by argument. In this case, one of those core principles is based on an even exchange,

a level playing field, made at the Step A Level. That language is absolute. And there is simply no bypass to that requirement. I am of the considered opinion the chief negotiators were very skillful in their design of Article 15 language. Their opting of full disclosure at the Step A Level only facilitates resolution.

In fact, the negotiators, in the design of that Article 15 language, say so themselves. And with that in mind, their order to bar evidence or position beyond that Step A level is absolute. The Parties are free to develop and discuss different settlement possibilities; however, the introduction of new facts, evidence or **opposition to an opposing argument** is barred following the Step A level.

The foundation of any settlement is based on that core interchange of data, information and argument. That exchange provides the spawning impetus of any settlement. And without such a foundation, any type of settlement is virtually unachievable. And I am of the considered opinion the chief negotiators of this Agreement recognized such a foundation when authoring this Article 15 structure of the Parties Agreement.

In this matter, it was clear the Employer failed to challenge the Union's requested remedy at the Step A level. And

regardless of argument or circumstance, the failure to introduce opposition at the Step A level bars either Party from introducing an argument or opposition at a future proceeding, whether it be at that next Step B level or arbitration.

In this case, the Employer at Step A failed to challenge the Union's requested remedy. Therefore to make such a challenge at arbitration is unacceptable based on that unambiguous language of Article 15.2 mentioned above.

With all of that in mind, I do not consider the requested remedy by the Union to be arbitrary or unreasonable. Therefore, the Union's requested Step A remedy is hereby granted.

The period of compensation will be 19 December 2013 through 19 February 2014. Also noted is the fact that all Grievants are not expected to receive the same compensation. Instead, compensation shall be determined by reviewing the clock rings.

I will retain jurisdiction of this case for 90 days from receipt of this decision to ensure the proper amounts of compensation are agreed upon by the Parties.

AWARD

The Union's requested remedy is granted in accord with the above.

> **".. that management cease and desist and now and in the future allow the CCA to work their opt assignment as scheduled. The union request that CCA's D. Charles, D. Lemon, A. Medina, C. Smith, R. Bartholomew and Z. Weber be paid 10 dollars a day until there hold was broken, voluntarily reassigned, started working the hold down as scheduled or until the present, whichever comes first or whatever an arbitrator deems appropriate."**

The period of compensation will be 19 December 2013 through 19 February 2014 and compensation shall be determined by reviewing the clock rings.

Dated: April 22, 2015
Fayette County PA