

Carlton Snow 10/25/84 Won  
Art. 28 & 19 - Deducted the overcompensation payments from pay-check prior to ruling on the request for waiver  
AIRS #4092

IN THE MATTER OF ARBITRATION )  
 )  
 BETWEEN )  
 )  
 AMERICAN POSTAL WORKERS UNION )  
 )  
 AND )  
 )  
 UNITED STATES POSTAL SERVICE )  
 (Case No. W1C-5F-C 9030) )  
 (Sanders Grievance) )

A.P.W.U.

ANALYSIS AND AWARD

Carlton J. Snow,  
Arbitrator

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I. INTRODUCTION

This matter came for hearing pursuant to a collective bargaining agreement between the parties effective from July 21, 1981 through July 20, 1984. A hearing occurred on June 29, 1984 in the Main Post Office located in Denver, Colorado. Mr. John A. Kelly represented the American Postal Workers Union, and Ms. Anna M. Schneider represented the United States Postal Service.

The hearing proceeded in an orderly manner. There was a full opportunity for the parties to submit evidence, to examine and cross-examine witnesses and to argue the matter. All witnesses testified under oath. The arbitrator tape-recorded the proceeding as an extension of his personal notes. The advocates fully and fairly represented their respective parties.

The parties stipulated that the matter properly had been submitted to arbitration and that there were no challenges to the substantive or procedural arbitrability of the dispute. The parties authorized the arbitrator to retain jurisdiction for

sixty days after an award had been rendered. The parties elected to submit post-hearing briefs, and the arbitrator officially closed the hearing on receipt of the final brief.

## II. STATEMENT OF ISSUES

The parties were unable to stipulate to the issues and authorized the arbitrator to state them. The issues before the arbitrator are as follows:

(1) Did the Employer violate Article 28 of the parties' collective bargaining agreement when it demanded from the grievant and then subsequently deducted from his paychecks a claim for overcompensation after the grievant had filed a waiver for the claim and before the Employer had ruled on the waiver? If so, what is the appropriate remedy?

(2) Did the Employer violate Article 19 of the parties' collective bargaining agreement when it denied the grievant's request for a waiver of the Employer's claim for overcompensation? If so, what is the appropriate remedy?

### III. RELEVANT CONTRACTUAL PROVISIONS

#### ARTICLE 19 - HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Time-keeper's Instructions.

#### ARTICLE 28 - EMPLOYER CLAIMS

##### Section 4. Collection Procedure

A. If the employee grieves a demand in the amount of more than \$200.00 which is made pursuant to Sections 1, 2 or 3, the Employer agrees to delay collection of the monies demanded until disposition of the grievance has been had either by settlement with the Union or through the grievance-arbitration procedure.

### IV. STATEMENT OF FACTS

In this dispute, the grievant has challenged management's decision to deduct overcompensation payments from the grievant's paycheck prior to a ruling on his request for a waiver. The grievant is a full time distribution clerk employed on Tour III "Cityside" in the Denver facility. Prior to 1979, the grievant had been experiencing medical difficulties. As a result, he was having a difficult time working as an MPLSM operator.

MPLSM operators are paid at Level 6. On July 24, 1979, Ms. Welman, the injury compensation supervisor, issued a letter

indicating physical limitations of the grievant due to his medical difficulties (See, Joint Exhibit No. 2, p. 14). The grievant previously had requested that he be allowed to change from his MPLSM operator position to light duty in the NIXIE Section. The letter of July 24, 1979 from Ms. Welman indicated that the grievant's request would be granted. The letter indicated that "a form 50 should be cut to change [the grievant] from a Level 6 machine clerk to a Level 5 distribution clerk."

The reassignment occurred. On being assigned to his new "light duty" position, the grievant received a Form 50 from the Employer. The Form 50, however, did not indicate a change in the grievant's pay level. (See, Joint Exhibit No. 2, p. 15). The Form 50 the grievant received, dated September 20, 1979, indicated that he still was receiving Level 6 pay.

The grievant testified he was aware that the job reassignment request he had made would result in his changing jobs. He testified, however, that he was not aware of any difference in pay scales from one job to another. Additionally, he testified he was under the impression that, until he received a Form 50 indicating a change in his pay status from a Level 6 to a Level 5, he would continue receiving and be entitled to Level 6 pay. He testified that he thought he was receiving the correct pay until he reviewed his pay stubs with his shop steward. He testified that he had discussed the matter with his supervisors. On December 16, 1981, the Employer issued a Form 50 correcting the grievant's salary by reducing his pay to that of a Level 5. The grievant erroneously had received Level 6

pay from July 28, 1979 through December 11, 1981. That is, he had been overcompensated by approximately \$25.00 a pay period for a total of \$1522.52 gross overpayment. On August 27, 1982, the grievant submitted a request for a waiver of the Employer's claim for overcompensation. On September 20, 1982, management sent the grievant a demand notice indicating that he should make arrangements for repayment of the \$1522.52.

Prior to management's ruling regarding the grievant's request for a waiver of the Employer's overcompensation claim, management began involuntarily deducting the overcompensation payment from the grievant's paychecks. Those deductions began prior to any ruling on the grievant's request for waiver. By the time of the arbitration hearing, approximately \$600.00 of the total \$1522.52 had been withheld from the grievant's paychecks. On July 15, 1983, the Employer denied the grievant's request for a waiver.

V. POSITION OF THE PARTIES

A. The Union:

It is the position of the Union that the Employer violated Article 28 of the parties' collective bargaining agreement when it involuntarily deducted the overcompensation payments from the grievant's paychecks prior to a decision on the employe's request for a waiver. Additionally, the Union argues that the Employer violated Article 19 of the collective bargaining agreement when it actually denied the grievant his request for a waiver. It is the position of the Union that the overpayment by the Employer was a clear administrative error, and the grievant acted reasonably and in good faith and that granting a waiver in this case would have been in good conscience and in the best interest of the Employer.

B. The Employer:

The Employer has taken the position that Article 28 of the parties' collective bargaining agreement is not applicable to overcompensation claims by the Employer against an employe. Accordingly, the language of that particular contractual provision allegedly cannot be used to limit the authority of the Employer to withhold overpayments to an employe from that individual's paycheck prior to a ruling on the employe's request for a waiver. In addition, the Employer argues that the grievant correctly has been denied a waiver because he himself was

aware of the overcompensation and took no action to withhold the money for repayment to the Employer.

## VI. ANALYSIS

### A. Making Deductions Prior to Ruling on the Request for Waiver

The parties' collective bargaining agreement has addressed the issue of overcompensation. In particular, it provides guidelines regarding whether the Employer shall withhold monies prior to a determination on such a claim. Article 28 of the parties' collective bargaining agreement states that:

In advance of any money demand upon an employee for any reason, the employee must be informed in writing and the demand must include the reasons therefor. (See, Joint Exhibit No. 1, p. 79, emphasis added).

Article 28 applies to any and all claims by the Employer against an employe "for any reason." The contractual provision clearly includes claims by the Employer against an employe for overcompensation. Section 4 of Article 28 states:

A. If the employee grieves a demand in the amount of more than \$200.00 which is made pursuant to Sections 1, 2 or 3, the Employer agrees to delay collection of the monies demanded until disposition of the grievance has been had either by settlement with the Union or through the grievance-arbitration procedure. (See, Joint Exhibit No. 1, p. 80, emphasis added).

Section 4 of Article 28 has been limited to claims raised under Section 1 (Shortages and Fixed Credits); or Section 2 (Loss of or Damage to the Mails); and Section 3 (Damage to

the Employer's Property and Vehicles). It, however, is consistent with reasonable principles of contract interpretation to apply Section 4 to the Preamble of the article as well so that it would apply to claims arising "for any reason." That construction of the contractual provision would make Section 4 applicable to overcompensation claims. The parties have enunciated their intent in Section 4 to require the Employer, in cases involving significant claims of \$200.00 or more, to delay collecting the claim until after the grievant has had an opportunity to seek adjudication of the claim.

For claims arising under the first paragraph of Article 28, the parties have failed expressly to set forth their intent regarding when the Employer will be permitted to recover such claims, pending waiver proceedings. It is clear, however, that the parties expressly have set forth their intent in Section 4 with regard to claims arising under Sections 1, 2, or 3 of Article 28. It is clear that they have intended for the entire article to be construed consistently. Consequently, limitations placed on claims arising under Sections 1, 2, or 3 of Article 28 should also be applied to claims arising under the first paragraph or preamble of that article. This reasonable interpretation of the parties' agreement means that the Employer is not permitted to collect claims of overpayment prior to a determination on an employe's request for waiver. As the Restatement (Second) of Contracts has stated:

Words and other conduct are interpreted in the light of all the circumstances, and if the principal purpose of the parties is ascertainable, it is given great weight. (See, § 202(1), p. 86 (1981)).



In light of the principal purpose of the parties to be found in Sections 1, 2, and 3, it is reasonable to conclude that the parties intended to apply the procedures set forth in Section 4 to the preamble to Article 28, and such an interpretation permits Article 28 to be understood in a harmonious and consistent way.

B. The Grievant's Request for a Waiver:

Article 19 of the parties' collective bargaining agreement states:

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. (See, Joint Exhibit No. 1, pp. 70-71).

Article 19 of the parties' agreement incorporates various manuals into the parties collective bargaining agreement. Among provisions incorporated into the agreement by Article 19 is Section 437.6(.61)(a), (b) and (c) of the Employer's Employee and Labor Relations Manual. Section 437.6 states that the Employer will waive claims by the Employer for overcompensation if certain conditions have been met. The provision states:

437.6 Action by Postal Data Center (PDC)

.61 The PDC will waive the claim if it can determine from a review of the file that all of the following conditions are met:

a. The overpayment occurred through administration error of the USPS. Excluded from consideration for waiver of collection are overpayments resulting from errors in timekeeping, keypunching, machine processing of time cards or time credit, coding, and any typographical errors that are adjusted routinely in process of current operations

b. Everyone having an interest in obtaining a waiver acted reasonably under the circumstances, without any indication of fraud, misrepresentation, fault, or lack of good faith.

c. Collection of the claim would be against equity and good conscience and would not be in the best interest of the USPS. (See, Joint Exhibit No. 2).

It is the requirements of 436.6(.61)(c) that are most difficult to determine. When collection of a claim would be "against equity and good conscience" or would not be "in the best interest" of the Employer cannot always be determined with scientific precision. The parties, however, have provided some insight into the meaning of this requirement in an earlier version of the Employee and Labor Relations Manual which incorporated Public Law 90-616. Section 755.9(93)(b) stated:

- b. Collection action under the claim would be against equity and good conscience and not in the best interests of the United States. Generally these conditions will be met by a finding that the erroneous payment of pay occurred through administrative error and that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee, former employee or any other person having an interest in obtaining a waiver of the claim. (See, Joint Exhibit No. 2(16), emphasis added).

The grievant should have received a waiver of his claim in this case. The overpayment was the clear result of an administrative error by the Employer. The grievant filed for a

change in position from a Level 6 MPLSM clerk to a Level 5 NIXIE distribution clerk. The Employer transferred the grievant but failed to arrange the corresponding salary adjustment. (See, Joint Exhibit 2, p. 15, Form 50). If fault must be assigned with regard to the resulting two and a half years of overcompensation, it must fall on the Employer.

The grievant acted reasonably under the circumstances. There was no indication of any intent to defraud, misrepresent, to act with fault or any showing of a lack of good faith. The grievant believed he could remain a Level 6 worker until he received a Form 50 from the Employer indicating that he had been changed to Level 5. His understanding was not unreasonable in light of the letter of July 24, 1979 to the grievant from Ms. Welman. Ms. Welman indicated that a Form 50 "should be cut to change [the grievant] from a Level 6 Machine Clerk to a Level 5 Distribution Clerk." (See, Joint Exhibit No. 2, p. 14). There was no evidence showing the grievant understood that by changing jobs he was changing pay levels. Evidence submitted at the hearing established that the grievant is untutored and not at all keen regarding data contained on his pay stubs. There simply was no showing of any action on his part that constituted unreasonableness or bad faith.

The grievant testified that eventually he discovered the error in his salary and immediately reported that fact to his supervisor. He believed he had done all that he could to rectify the situation, and he relied on his supervisor to correct the error. The amount of overcompensation totalled approximately

\$25.00 per pay period. After taxes and other various deductions, it was not a sufficient amount to indicate to this particular grievant that he was being overcompensated, in light of his disinclination to compute his wages with any refinement. Nor was it reasonable to expect the grievant to do more than an average, prudent person in reviewing his wage stubs in order to be certain that they were reasonably accurate.

The grievant's request for a waiver of the Employer's overcompensation claim in this case has been made in good conscience, and it is in the best interest of the Employer not to pursue the collection of the overpayment. Under Section 755.9(.93)(b) of the earlier postal service manual, such a claim must have been the result of administrative error; and the grievant must have acted in good faith and without fraud and reasonably in order for the claim by the Employer not to be in good conscience or in the best interest of the Postal Service. The grievant's overpayment clearly resulted from an administrative error. He has acted reasonably and has done so in good faith and without fraud. Consequently, it is reasonable to conclude that the Employer's claim for overpayment has not been made in good conscience and is not in the best interests of the Employer. Accordingly, it was not reasonable to deny the grievant's request for a waiver.

This conclusion is consistent with the interpretations of Article 19 and Section 437.6(.61) of the E and LM by other arbitrators. In Case No W8C-5D-C-10455, an arbitrator found that a grievant who had failed to detect an overpayment resulting

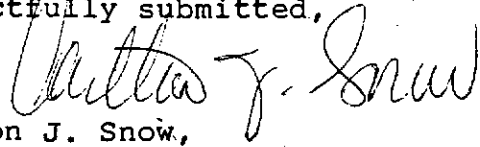
from a clerical error for nearly a year was at fault and was not entitled to a waiver. The arbitrator determined that, because the grievant in that particular case had himself bid to a lower level, he should have been aware of a lack of change in his paycheck. The arbitrator recognized, however, that there might have been evidence to explain or justify why the grievant did not have knowledge that would have absolved him from fault in the case. Lacking such information, the arbitrator ruled against the grievant.

In this particular case, there exist factors which explain and justify the grievant's actions. The grievant reasonably concluded that his pay would remain at Level 6 until he received a Form 50 indicating a change in his pay to Level 5. On discovering the error, the grievant immediately discussed the matter with his supervisor. He received assurances that the matter would be resolved promptly. He acted in good faith and reasonably, given the degree of his sophistication and understanding of the circumstances.

AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Employer violated Article 28 of the parties' collective bargaining agreement by withholding the claim for overcompensation from the grievant's paychecks as well as Article 19 of the parties' collective bargaining agreement when it denied the grievant's request for a waiver. The Employer is required to refund the grievant any and all moneys withheld from his paychecks with regard to the Employer's claim for an erroneous overpayment. The Employer also shall grant the grievant a waiver of its claim for overcompensation consistent with the findings in this report. The arbitrator shall retain jurisdiction of this matter for a period of sixty days from the date of this report in order to resolve any problems resulting from the remedy in the award. It is so ordered and awarded.

Respectfully submitted,



Carlton J. Snow,  
Professor of Law

Date: 10-25-84