

C-20126


REGULAR ARBITRATION PANEL
WESTERN AREA

UNITED STATES POSTAL SERVICE)	GRIEVANT: Young Chu Cooper
)	
and)	POST OFFICE: Las Vegas NV
)	
NATIONAL ASSOCIATION OF)	CASE NO. E90N-4E-C 97118232
LETTER CARRIERS, AFL-CIO)	
)	NALC GTS NO. 44520
)	
)	ARBITRATOR'S NO. B538

BEFORE:	William Eaton
APPEARANCES:	Postal Service: Patricia A. Hansen
	Union: Julie L. Bryant
PLACE OF HEARING:	Las Vegas Nevada
DATE OF HEARING:	September 17 1999
DATE OF AWARD:	November 11 1999
RELEVANT CONTRACT PROVISIONS:	Article 28; NALC-USPS MOU
CONTRACT YEAR:	current
TYPE OF GRIEVANCE:	Letter of Demand

AWARD

The Postal Service did not meet its obligation under Article 28 of the National Agreement when it issued a Letter of Demand to the Grievant on March 27 1997. The Letter of Demand is therefore rescinded, and neither the Postal Service nor the Grievant shall pursue any further claim in regard to this matter.


William Eaton, Arbitrator

STATEMENT OF THE CASE

The issue to be determined is whether Management met its obligation under Article 28 of the National Agreement when it issued a letter of demand to the Grievant on March 27 1997, and if not, what the remedy shall be. Hearing was held at Las Vegas Nevada on September 17 1999, at which time both parties were represented by advocates of their choosing. The Grievant was present throughout the hearing and testified in her own behalf. Following presentation of evidence it was agreed that the matter would be submitted upon simultaneous filing of post-hearing briefs, which was completed on October 26 1999.

The Grievant was served a Letter of Demand in the amount of \$5,677.84 on March 27 1999, demanding payment due to "overpayment of salary." The attached invoice stating the amount due also indicated that the claim was a "payroll related debt," and that it was assessed "per Memorandum of Understanding NALC dated June 28, 1995 salary overpayment." There was no further explanation of the claim, and no further documentation was presented prior to Step 3 of the grievance procedure.

The Union contends that documentation furnished does not satisfy the requirement of Article 28 that the employee be informed of the "reasons therefore" when a Letter of Demand (LOD) is issued. The Postal Service contends that the LOD and its attachments satisfy the requirements of Article 28.

Contractual Provisions

ARTICLE 28 EMPLOYER CLAIMS

The parties agree that continued public confidence in the Postal Service requires the proper care and handling of the USPS property, postal funds and the mails. 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.

MEMORANDUM OF UNDERSTANDING BETWEEN THE UNITED STATES POSTAL SERVICE AND THE NATIONAL ASSOCIATION OF LETTER CARRIERS Dated 6/28/95

Re: Promotion Pay

6. Following the application of the "new" rules, each pay period within the reconstructed salary history will be compared with the corresponding pay period in the actual salary history. All periods in which the employee is overpaid will be offset by those periods, if any, that the employee was underpaid. The employee will receive any positive balance in the form of a lump sum payment in a subsequent pay period. Any negative balance will be handled in accordance with the collection procedures for the erroneous payment of pay.

ARGUMENTS

Union

The issue at hand is a relatively simple one to decide. Did Management fulfill their obligation under Article 28 when it issued the Letter of Demand to the Grievant? The answer to that question is a clear and unequivocal no. The Union repeatedly requested proof of the overpayment, how the Service came up with the amount that was being demanded, what exact dates the overpayments occurred, and an explanation or reason of why there was an overpayment. At no point during Step 1, 2, or prior to the grievance being appealed to Step 3 of the grievance process

did the Service provide documentation which explained the supposed overpayment. The Service finally sent a Payroll History Journal to the Grievant, date unknown, which Management contends contained the documentation that proved the Grievant had been overpaid from pay period 92/25 through 95/11.

The Grievant testified that the documentation provided did not explain how she was overpaid, nor did she understand how the data proved that she owed money, or exactly how Management came up with the figure of \$5,677.84. She also testified that the amount of \$5,677.84 was not listed on the Pay History Journal.

Ms. Rose Fernandez, USPS, testified that she prepared a Step Calculator and Employee Profile in order to clarify what pay grade the employee was originally paid and during what pay period, and what pay she actually should have been paid to be in compliance with all provisions of the CBA and Postal Regulations.

Ms. Fernandez had not completed her new calculations, so even though the new evidence was improper, Management still could not explain how the amount owed was calculated, or exactly when the overpayments occurred. Nor could they prove that the amount supposedly owed equaled \$5,677.84. The incredible irony is that Ms. Fernandez stated more than once that the Payroll History Journal was incorrect or contained errors, but she used the erroneous Journal to make the new calculations of the supposed overpayments.

The Union objected to the new attempt by Management to finally bring forth the reasons and amount of supposed overpayment at the hearing, since both parties are obligated to have entered all relevant facts, arguments, and documentation prior to the hearing.

The Union would draw the Arbitrator's attention to arbitration decisions that support the Union's objections. In Case No. NC-E-11359 Arbitrator Benjamin Aaron states:

It is now well settled that parties to an arbitration under a National Agreement between the Postal Service and a signatory Union are barred from introducing evidence or arguments not presented at preceding steps of the grievance procedure, and that this principle must be strictly enforced.

In Case No. N8-W-0406 Arbitrator Mittenthal states:

The difficulty here is the lateness of this argument. Article XV describes in great detail what is expected of the parties in the grievance procedure....Its reliance on this contract provision did not surface until the arbitration hearing itself...it would be inappropriate to consider this belated Article XIII claim.

Under Article 28 of the CBA, "the employee must be informed in writing and the demand must include the reasons therefor." Webster's New Collegiate Dictionary defines reason as:

computation: calculate, think, 1a: a statement offered in explanation or justification <gave ~s that were quite satisfactory> b: a rational ground or motive <a good ~ to act soon> c: a sufficient ground of explanation or of logical defense; esp., something (as a principle or law) that supports a conclusion or explains a fact <outlined the ~s behind his client's action> d: the thing that makes some fact intelligible...

The statement made by Postmaster Rucker in the Letter of Demand, "the amount of \$5,677.84 was established to collect for an overpayment of salary," is a grossly inadequate explanation or reason as to why the Grievant owes money to the USPS.

In support of the Union's contention that the Service has not lived up to the burden placed upon them under Article 28 of the CBA, the Union cites a recent

arbitration decision by Arbitrator Parent dated April 10 1999, Case No. F94N-4F-C
97111839:

A reasonable person would expect that when the Employer advises an employee that she/he has been overpaid a certain amount, some sort of explanation or calculations would be provided to substantiate the claim and not simply a reason such as "You have been overpaid in the amount of..., therefor please advise us how you plan to repay this amount"— which, in effect, is what was provided the Grievant in the instant case. Over-payment may be the reason for the request for reimbursement, but in this arbitrator's opinion, absent some sort of simple explanation as to how the claimant arrived at the requested reimbursement figure, the intent of the language of Article 28 has not been satisfied. At the hearing the Employer's advocate himself admitted, with refreshing candor, that the computations show the Payroll Journal were beyond his comprehension.

This case resembles the instant case before this Arbitrator to such a great extent that it is astonishing. The Service in the above-cited case also contended the Grievant was overpaid, and provided an indecipherable Payroll History Journal that did not meet the provisions required under Article 28.

At the arbitration hearing the Grievant, the Union, Management's expert witness, Ms. Fernandez, and the Arbitrator all attempted to ascertain the reasons and to decipher the documentation that supposedly delineates the amount owed and noted in the Letter of Demand, but to no avail. Ms. Fernandez became so frustrated and confused, due to the indecipherable documentation provided in the Payroll History Journal, that she stated clearly that it is not her job to explain the Payroll Journal, and that she could not explain exactly how the Grievant was overpaid. How can the Service expect the Grievant to understand how she may have been overpaid if their own witness can't?

The Service's witness stated that the Payroll Journal was incorrect, and that the calculations stating that she should have been paid at level 6B had to be incorrect because the Grievant would have attained level 5C by that time frame. She also concurred that the Grievant would be owed money due to this other pay anomaly created since the regulations provide that an employee cannot be paid less at level 6 than they would have been paid if they had remained as a level 5 employee. At this point in the testimony the Arbitrator asked why the underpayment was not considered, and when the Grievant could expect to be paid for the underpayment. The Service's advocate stated that this other pay anomaly was somehow different, and the Grievant would be paid eventually. Once again Management's explanations and contentions are grossly inadequate to meet the provisions required under Article 28.

The Union reviewed many arbitration decisions in order to insure that our contention, that Article 28 was in fact violated in the instant case, would ring true. The issue that surfaces time and again is whether or not Management adequately explained and proved that the employee owed money to the Service. If Management proved the overpayment, prior to the arbitration hearing, the grievance was denied, and if they did not prove the overpayment, the grievance was sustained.

The Union requests that the grievance be sustained and the Letter of Demand be found null and void. The Union further requests that the Arbitrator rule that the Service cannot reissue another Letter of Demand upon the Grievant since their obligation was to adequately explain the supposed overpayment at the

time the letter was issued over two and a half years ago. To issue another Letter of Demand would allow the Service to re-litigate an issue that would have already been decided by this Arbitrator.

Postal Service

The NALC contends the grievance should be granted because Management did not explain to the Grievant the reasons for the Letter of Demand (LOD) issued on March 27 1997 as provided under Article 28 of the Collective Bargaining Agreement.

This Letter of Demand was issued to the Grievant as the result of a Memorandum of Understanding (MOU) signed by the parties at the National level in 1995, which was widely publicized. The Grievant was overpaid when she changed levels as a result of the pay anomaly that resulted from the 1984 contract negotiations, adding new steps with the longer waiting to the existing pay schedule.

As a result of calculations pursuant to MOU procedures, the Grievant's salary history was computed to show a negative balance of \$5,677.84. Article 28 simply states the employee must be informed in writing and the demand must include the reasons. The very first paragraph of the Letter of Demand states, "The attached Invoice No. #700115103, dated March 5 1997, in the amount of \$5,677.94, was established to collect for an overpayment of salary." (Emphasis added) The actual Invoice also states "PAYROLL RELATED DEBT" and "PER MEMORANDUM OF UNDERSTANDING NALC DATED JUNE 28, 1995 SALARY OVERPAYMENT."

The Union filed their undated Step 1 grievance stating, "Grievant received cert letter #27939803636 in the amount of \$5,677.94 with the invoice #700115103 for alleged overpayment of salary from USPS." The Grievant and the NALC were supplied documentation of her payroll journal. The journal documents what was paid as well as the amounts that should have been paid for the affected pay periods and various pay levels. There has been no demonstration that the Union has analyzed the provided information. They haven't denied that she was overpaid. Their argument is that she shouldn't have to pay it back.

Pay step calculations were also provided to the Step 3 designee representing the Grievant. Additionally, documentation of the settlements with NALC, the Mailhandlers, and APWU was provided to demonstrate the difference in the agreements and the reason the overpayment of salary was being sought from the Grievant.

The NALC did not agree to waive the negative balances of overpayment for their members as the APWU and Mailhandlers did. They agreed that "any negative balance will be handled in accordance with the collection procedures for the erroneous payment." This is the same past practice Management has used nationally and locally in issuing these Letters of Demand for salary overpayments. There is no specific form required to use for Letters of Demand.

Thus, the Letter of Demand was issued correctly. The Postal Service followed the appropriate procedures to collect this overpayment as per the National Memorandum of Understanding.

An award by Arbitrator Skelton, C94-4C-C 97113419, is exactly on point. In that case the grievant was overpaid, was provided documentation, but continued to claim he could not understand why he was overpaid. Arbitrator Skelton also cites the difference between the NALC agreement, where they did not waive the collection of overpayments, and the APWU, which did.

The Postal Service position is that an arbitrator does not have the authority to forgive the Grievant's debt where paid incorrectly. If the Arbitrator were to decide this letter was procedurally defective, Management cannot be barred from issuing a Letter of Demand according to any specifics identified by the Arbitrator as necessary.

This is a contract case that requires the Union to demonstrate through clear and convincing probative evidence that Management violated the National Agreement at Article 28. The Union must prove a requirement exists to state more than was stated in the LOD. If the Union wants specific language in the LOD, they must negotiate that language, not try to obtain it in a rights-based arbitration. They have failed to demonstrate that any violation of Article 28 has occurred.

It is respectfully requested that the Union's grievance be denied and dismissed in its entirety.

ANALYSIS

Article 28 requires that the "reasons therefor" be stated in writing to an employee when a Letter of Demand is issued. It is true, as the Postal Service argues, that there are no specific requirements as to the form in which the

"reasons" must be stated. Nevertheless, both the definition of the word "reason" quoted in the Union's brief, and Postal Service cases presented with the Union's brief indicate that some articulate and understandable explanation is required.

At the arbitration hearing the Grievant presented brief testimony to the effect that she initially was given no documentation whatsoever, and that when some documentation was finally presented at Step 3 she could not understand it, and that no one ever explained to her what the basis of the claim was.

The Postal Service presented testimony by Compensation Specialist Rose Fernandez to counter the Grievant's contentions. However, it became clear during the course of her testimony that the matter could not be clarified at that time, and it was at that point that agreement was reached to submit the case upon written briefs.

The Union is correct in its contention that new evidence is not admissible at the arbitration level for the reasons set forth in the arbitration awards cited in the Union's brief, and in many similar Postal Service decisions as well, for that matter. The essential problem, however, is that even if new testimony and documentary evidence offered at the hearing and in the Postal Service post-hearing brief were to be considered, the facts remain analogous to those described in the decision of Arbitrator Guy M. Parent, quoted in the Union's brief. That is, there has been no clearly articulated statement by the Postal Service to the Grievant, in writing or otherwise, as to precisely what the basis of the claim is. Even at the hearing most of the discussion was involved with attempting to understand details of accounting that should have been digested and consolidated long before, and were such that no

clear picture of the Postal Service claim was discernible in any event.

In addition to citation of Arbitrator Parent's case in its brief, the Union has submitted several other Postal Service awards, two of which present analogous circumstances, Case No. E7C-2E-C 18954, decided by Arbitrator Walter H. Powell on November 16 1990, and Case No. E7C-2D-C 10878, decided by Arbitrator Nicholas H. Zumas on July 16 1990. Arbitrator Powell ordered that a Letter of Demand be rescinded for the reason that procedural requirements set forth in administrative manuals had not been met in the issuance of the LOD. In the present dispute, it is simply the requirements of Article 28, not requirements of administrative manuals, which have not been met.

Arbitrator Zumas found that a Letter of Demand for health benefit premiums was improper for the reason that the Service had failed to demonstrate a loss. In the present dispute the Postal Service has similarly failed to demonstrate precisely when, and by how much, the Grievant was allegedly overpaid.

The case cited by the Postal Service, C94N-4C-C 97113419, by contrast, was a case in which the arbitrator concluded that Management had followed the appropriate procedures under the 1995 Pay Anomaly Memorandum when it calculated the overpayment to the grievant therein, so that the Letter of Demand was appropriate. The arbitrator found that in that case Management "offered the documentation that explains precisely the amount of money owed." The same can hardly be said for Management's presentation in the instant dispute.

These findings are not based, as the Postal Service seems to imply, on a theory of hardship, mitigation, or an intent to "forgive" the Grievant's debt. Rather,

they are based squarely on failure of the Postal Service to comply with the provisions of Article 28 requiring that "reasons therefor" be given to substantiate a Letter of Demand. All the Postal Service offered in the LOD was a conclusory statement that the Grievant had been overpaid, with no supporting rationale whatsoever.

It is rather surprising to find the Postal Service arguing that, should a defect in the issuance of the LOD be found, the appropriate remedy would be to allow the Postal Service to go back and reissue the LOD. This is analogous to an argument that, there having been a procedural deficiency in assessing discipline, so as to negate the discipline, the Postal Service could go back and do it all over again. Clearly such an argument undercuts the very purpose of the grievance-arbitration procedure set forth in the National Agreement.

As a final note, it must be observed that the Award sustaining the grievance must also provide that the Grievant cannot pursue any underpayment which may have occurred in the period in dispute.

AWARD

1. The Postal Service did not meet its obligation under Article 28 of the National Agreement when it issued a Letter of Demand to the Grievant on March 27 1997. The Letter of Demand is therefore rescinded, and neither the Postal Service nor the Grievant shall pursue any further claim in regard to this matter.

2. The Arbitrator retains jurisdiction in the event that any dispute should arise as to the interpretation or application of this Award.



William Eaton
Arbitrator

November 11 1999