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NALC REGION 8

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration *
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between: *
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United States Postal Service *
*
and *
*
National Association of *
Letter Carriers, AFL, CIO *

Grievant: Thomas Morgan
Post Office: Cookeville TN
USPS Case No: C06N-4C-D 12087310
NALC Case No: B40003412

BEFORE: Lawrence Roberts, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Ms. Jerri Renee Cannon
For the Union: Mr. Corey L. Walton


Place of Hearing: Postal Facility, Cookeville TN
Date of Hearing: August 8, 2012
Date of Award: August 22, 2012
Relevant Contract Provision: Article 3 - 16 - 19 - 41
Type of Grievance: Contract

Award Summary:

SYNOPSIS: This case involves a Grievant put out on Emergency Placement following an investigation by the OIG. The Union successfully argued that the Grievance should be sustained based on procedural issues. Accordingly, the grievance is sustained and the Grievant made whole.

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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 8 August 2012 at the postal facility located in Cookeville TN, beginning at 9 AM. 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 tape recorder and personal notes. The Arbitrator is assigned to the Regular Regional Arbitration Panel in accordance with the Wage Agreement.

THE ISSUES:

1. Did Management violate Articles 16 and 19 of the National Agreement when they placed Letter Carrier Thomas Morgan on Emergency Placement (EP)?
2. Did Management violate Article 17 and 31 of the national Agreement when the OIG Agents instructed Steward Chris Cunningham to not interject in their questioning of the Grievant Thomas Morgan, or they would ask him to leave?
3. Did Management violate Articles 17 and 31 of the National Agreement when they failed to furnish the Union's request for information in a timely manner?

PERTINENT CONTRACT PROVISIONS:

Articles 16, 17, 19, 31

M-00546 NALC Memorandum, 11/30/1981

JOINT EXHIBITS:

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

BACKGROUND AND FACTS :

On January 19, 2012 two agents from the OIG's office appeared at the Cookeville Post Office and asked to speak with the Grievant Thomas Morgan.

The Grievant had just finished casing his mail and was preparing to move to the street to make his deliveries. At that time the Grievant was advised that the OIG agents wanted to speak to him.

The Grievant requested to have his Union Steward accompany him in the interview with the OIG agents. His request was approved and the Grievant along with the Steward met with the agents.

Testimony of the steward indicated that at the opening of the meeting an OIG agent indicated they were responding to a letter they received about the Grievant and that they were investigating theft of mail.

The Grievant testified that he was asked by the agents to let them see a black bag he carried and he also testified that he was asked to let them look in his locker. Otherwise there was nothing in the record to suggest there was any investigation of mail theft and no apparent allegation of mail theft by the Grievant.

At the conclusion of the meeting with the OIG agents the Grievant was immediately put on Emergency Placement.

However, the letter the Grievant received placing him on EP states the action was taken:

“due to your alleged Unacceptable Conduct-Fabrication of Records to receive pay while not actually performing work for the United states Postal Service.”

There was no mention of mail theft in the Grievant's EP letter

The Union felt the EP action was improper and more importantly, the Union felt the Employer violated the Wage Agreement for several procedural reasons.

A request for documents was made by the Union on January 2012 . A grievance was then filed and discussed with the supervisor on January 30, 2012.

The formal Step A meeting was held on February 23, 2012.

The matter was not resolved and it was then forwarded to the Dispute Resolution Team. The B Team received the Grievance on April 5, 2012 and their decision was rendered on April 23, 2012. The DRT agreed to Impasse the Grievance indicating that all time limits were mutually extended.

The matter was then referred to arbitration and is properly before the undersigned for final resolution.

UNION'S POSITION:

The Union insisted the Grievant's due process rights were violated and the Grievance should be sustained for that reason alone.

More specifically, the Union insisted that the Grievant's Weingarten Rights were denied when the Union Steward was told he had to be quiet or he would be asked to leave the room while the Grievant was being interviewed.

The Union also asserted they were not provided with all the information they requested and needed to properly defend the Grievant. The Union argued they had to try to defend the Grievant in the blind without being provided the information they requested.

The Union asked that the Grievance be sustained and the Grievant be returned to work immediately and be compensated for all lost wages and benefits.

MANAGEMENT'S POSITION:

The Employer insisted they had Just Cause to put the Grievant out on EP. The Employer also argued that the Union was provided with all the documentation they had at the time and the OIG report was not available until much later.

The Employer went on to argue that the Grievant's Weingarten Rights were not denied pointing out that the Union Steward was present for the entire interview by the OIG.

According to the Employer it was obvious the Employee's request for Union representation was not denied. The Union Steward also testified that he was present for the entire interview. Accordingly, the Employer advocate argued aggressively that there was no evidence of any unfair labor practice.

DISCUSSION AND FINDINGS:

Having reviewed the entire record, all the evidence and testimony, in this case, I am convinced the Union's procedural arguments are controlling.

The Union Steward testified that he was told by an OIG Agent that he had to be quiet or he would be asked to leave the room. In my opinion that was a clear violation of the Grievant's Weingarten Rights.

On page 17-7 of the JCAM, regarding Weingarten Rights, it states:

"In a Weingarten interview the Employee has the right to a Steward's assistance – not just as a silent presence. The Employer would violate the Employee's Weingarten Rights if it refused to allow the representative to speak or tried to restrict the Steward to the role of a passive observer,"

That is exactly what the Union Steward testified to and the Employer was unable to refute his testimony. In fact, the record shows the Employer took the position that the Steward was present during the entire interview and felt that was sufficient.

Regarding the requirement for the Employer to provide information requested by the Union, **Article 31-3 of the JCAM states:**

"The Employer will make available for inspection by the Union all relevant information necessary.....including information necessary to determine whether to file or to continue the processing of the Grievance."

The list of documents shown at **Article 31-3 in the JCAM** also specifically identifies:

"Office of the Inspector General Report of Investigation."

The Union witness testified that the OIG report was furnished but it was not provided until a long time after the Grievance was processed through the several steps of the Grievance procedure. In fact the OIG report was not included in the Grievance package at arbitration.

The Union Steward also testified that he asked the Supervisor why he (the supervisor) was putting the Grievant out on EP and the answer he received was:

"I do not know"

The supervisor testified that he did say **"I do not know"** but attempted to explain his answer by saying he was not sure how the EP letter would be worded. It was obvious to me that the supervisor did not investigate the situation and did not really know why he was putting the Grievant out on EP.

The Employer advocate in this case did not have any witnesses to refute the several allegations of the Union which was harmful to Management's position.

Having reviewed the entire record and the testimony of all the witnesses I am at a loss myself as to just what it was that the Grievant had done that led to him being put out on EP.

The letter he received placing him on EP states the action was taken:

“due to your alleged Unacceptable Conduct-Fabrication of Records to receive pay while not actually performing work for the United states Postal Service.”

But that does not say anything about what he did or when he did it. The Union argued very convincingly that they were not given any specifics of the charges against the Grievant.

Therefore, it would have been impossible for the Union to properly defend the Grievant.

The Union's arguments in this case were substantiated by the record, the testimony of witnesses and the Employer's inability to refute the Union's arguments. For those reasons the Union's arguments far outweighed those of the Employer. The Union prevailed on all three issues.

For all the above reasons, I was convinced the Employer violated the Grievant's due process rights and this resulted in a violation of the Wage Agreement.

Accordingly, the Grievance is sustained and the Grievant shall be made whole in all respects.

AWARD

The Grievance is sustained. The Grievant must be returned to work and compensated for all lost wages and benefits.

Fayette County PA

Dated: August 22, 2012