

REGULAR ARBITRATION PANEL

In the Matter of Arbitration)
) Grievant: Class
between)
) Post Office: Pocatello, Idaho
UNITED STATES POSTAL SERVICE)
) USPS No. 4E 19N-4E-C 24049527
and)
) NALC DRT No. 02-641129
NATIONAL ASSOCIATION)
OF LETTER CARRIERS, AFL-CIO) NALC Branch No. 23-C35

Before: M. Zane Lumbley, Arbitrator, NAA

Appearances: For USPS: Sarah Nutas
For NALC: Kollin Luman

Place of Hearing: Pocatello, Idaho
Date of Hearing: November 8, 2024

AMENDED AWARD SUMMARY:

- I. It is the Award of the Arbitrator that management violated Article 15 of the National Agreement as well as USPS policy letter M-01517 via Article 19 of the National Agreement regarding the compliance with Step B Decision E19N-4E-C 23360192 resolved on October 26, 2023.
- II. It is therefore Ordered that Management:
 - A. Make available for interview those witnesses originally requested by the Union who have not been interviewed and who continue to be employed by the Service within 10 days of this Award; and
 - B. Cease and desist refusing to comply with Step B Decisions.
- III. It is also Ordered that the parties share the Arbitrator’s fees and expenses equally.
- IV. The Arbitrator hereby reserves jurisdiction for 30 days from the date of this Amended Award for the limited purpose of assisting the parties as may be necessary in compliance with the remedy directed above.

Date of Initial Award: January 10, 2025
Date of Amended Award: February 11, 2025
Panel: WestPac Area Regular

OPINION

PROCEDURAL MATTERS

This matter was convened pursuant to Article 15 of the National Agreement (“NA” or “Agreement”) at Pocatello, Idaho, on November 8, 2024. The parties were represented, called one witness who testified under oath administered by the Arbitrator and placed two exhibits into evidence. The parties agreed to file posthearing briefs and timely briefs were received by the Arbitrator on November 27 and 29, 2024, on the latter of which dates the record was closed.

ISSUE

At hearing, the advocates agreed on the following Step B issue to be resolved:

1. Did management violate Article 15 of the National Agreement as well as USPS policy letter M-01517 via Article 19 of the National Agreement regarding the compliance of [sic] Step B Decision E19N-4E-C 23360192 resolved on October 26, 2023?
2. If so, what is the appropriate remedy?

RELEVANT PROVISIONS OF THE NATIONAL AGREEMENT

The relevant provisions of the Agreement are:

ARTICLE 15 GRIEVANCE-ARBITRATION PROCEDURE

...

Section 2. Grievance Procedure – Steps

Informal Step A

(a) Any employee who feels aggrieved must discuss the grievance with the employee’s immediate supervisor with fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause. This constitutes the Informal Step A filing date. . . .

...

Section 3. Grievance Procedure – General

A. The parties expect that good faith observance, by their respective representatives, of the principles and procedures set forth above will result in resolution of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end. At each step of the process the parties are required to jointly review the Joint Contract Administration Manual (JCAM).

...

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, Timekeeper's Instructions.

Notice of such proposed changes that relate directly to wages, hours, or working conditions will be furnished to the Union at the national level at least sixty (60) days prior to issuance. At the request of the Union, the parties shall meet concerning such changes. If the Union, after the meeting, believes the proposed changes violate the National Agreement (including this Article), it may then submit the issue to arbitration in accordance with the arbitration procedure within sixty (60) days after receipt of the notice of proposed change. Copies of those parts of all new handbooks, manuals and regulations that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall be furnished the Union upon issuance.

Article 19 shall apply in that those parts of all handbooks, manuals and published regulations of the Postal Service, which directly relate to wages, hours or working conditions shall apply to CCA employees only to the extent consistent with other rights and characteristics of CCA employees provided for in this Agreement. The Employer shall have the right to make changes to handbooks, manuals and published regulations as they relate to CCA employees pursuant to the same standards and procedures found in Article 19 of the National Agreement.

BACKGROUND

This grievance arose when management failed to comply with the Step B Decision rendered in *Case No. 4E 19N-4E-C 23360192* on October 26, 2023, that directed management to make several witnesses available for interview by the Union. That decision noted, in relevant part, "If the Union still requires requested information management will provide the information within seven (7) days of receipt of this decision, and grievances resulting from any provided information will be considered

timely at the informal a meeting.”¹ The grievance was processed through the contractually mandated steps of the grievance procedure until impasse was reached at Step B on February 28, 2024, after which it proceeded to arbitration before the undersigned.

DISCUSSION AND ANALYSIS

Position of the Union

The Union argues on brief that, inasmuch as it is undisputed that the Step B Team made it clear when the local parties reached out after the initial Step B Decision that no new request for information was required in order for management to comply with its October 26, 2023, decision, and the undersigned ruled at hearing that management had conceded it had not complied, this dispute became one about remedy only. Accordingly, in NALC’s view, arguments proffered by the Employer on any other matters must be rejected by the Arbitrator.

As for the remedy, the Union asserts its requests for an order that management immediately comply with the October 26, 2023 Step B Decision and that management cease and desist its Article 15 violations, provide all missing interviews within 48 hours, pay Branch 927 a lump sum of \$200 for its costs involved in filing repeated grievances on the same issue and pay the fees and expenses of the undersigned should be granted.

Position of the Service

The Service contends on brief that the Union did not meet its burden of proof in order to demonstrate that management had failed to comply with the October 26, 2023,

¹ Joint Exhibit No 2 at 18.

Step B Decision since one individual sought to be interviewed is no longer employed by the Employer, others were employees who needed to be protected after having raised confidential harassment allegations during an IMIP investigation and yet others the Service finds it “hard to believe” were not made available by management during the extended passage of time between the Step B Decision at issue and the date of the hearing herein.

As to the matter of remedy, the Employer contends the Union’s request for a lump sum of \$200 to Branch 927 constitutes a punitive remedy that should be denied and the request raised by the Union at hearing that the Service be required to pay the fees and expenses of the Arbitrator was tardily raised and, thus, must also be denied.

Accordingly, the Service requests dismissal of the grievance.

Decision of the Arbitrator

Having now had the opportunity to consider the entire record in this matter, I have decided that management violated Article 15 of the National Agreement as well as USPS policy letter M-01517 via Article 19 of the National Agreement regarding the compliance with Step B Decision E19N-4E-C 23360192 resolved on October 26, 2023. While I have studied all the evidence submitted and considered each argument raised, the following discussion will address only those considerations I found either controlling or necessary to make my decision clear.

Initially, inasmuch as the parties stipulated at hearing that the Union’s requests to interview local employees Parkin and Dunn as well as both Service labor representatives that were in the office for the Publication 552 investigation

(one of whom continues to be employed by the Employer) have yet to be granted notwithstanding issuance of the October 26, 2023, Step B Decision directing the Service to do so, it is clear today just as it was at hearing in this matter that the merits of this dispute are not in question. In this connection, the Service's argument that local management has no control over the provision of individuals such as labor representatives and, thus, cannot be expected to make them available of its own accord cannot be adopted since Step B Decisions are not binding merely on local management but on the Service as a whole. The Step B Team directed management to make them available and a failure to do so is a failure to comply.² Moreover, there remains the matter of the requested interviews of local employees Parkin and Dunn that also have yet to take place.³ As the Step B Decision provides, "If the Union still requires requested information management will provide the information within seven (7) days of receipt of this decision." Nothing in that directive requires the Union to raise its requests all over again. Since they were never complied with in the first place and Step B found that to be a violation, the Service's obligation was to offer to make them available immediately after issuance of the Step B Decision. That did not occur.

Therefore, as I understood the advocates were in agreement at hearing once I ruled without objection from the Employer that a significant portion of its opening argument was inadmissible, as was the testimony of any new witness

² The Service's claim that it was required to protect certain employees from potential retaliation was one to be submitted to the Step B Team in *Case No. E19N-4E-C 23360192*, not the undersigned, so that it could consider the impact of that claim on the responsibility of local management to present requested witnesses for interview.

³ As the Union points out, in view of the language of Article 17 of the National Agreement, it cannot simply interview any local employees it chooses without the cooperation of local management that was never forthcoming here.

intended to testify why certain evidence was not in the file sent to Step B because they constituted new argument not raised at earlier stage of the grievance procedure, the dispute became one about remedy.

On the question of remedy, I agree in part with the Union and in part with the Service. As regards the Union's claim for \$200 expenses, the only evidence in the record other than the fact of this proceeding is the testimony of Carrier Parkin that management's failure to comply with the Step B Decision required the Branch to expend additional paper, toner, printer and priority mail expenses in furtherance of the instant grievance. I find those expenses insufficient to justify the Union's request for compensation for expenditures required in the ordinary course of its business. However, I agree completely with the Union that this matter never should have required an arbitration proceeding since the Service at all times exercised control over its own ability to comply with an absolutely clear Step B Decision as well as the language of the M-01517 that states, "Compliance with arbitration awards and grievance settlements is not optional."

I also agree with the Union that it raised its request that the Service be held responsible for the fees and expenses of the undersigned in a timely fashion since, by definition, like a substantive arbitrability claim, it could not have been raised earlier than the arbitration proceeding. However, as the National Parties (USPS Executive Vice President Breslin and NALC Executive Vice President Barner) jointly pointed out in their post-Award request for modification of the remedy initially directed, I am required to divide my fees and expenses equally between the parties absent their agreement that I do otherwise pursuant to

Article 15.4.A.6 of the National Agreement and my Conditions of Appointment.

Thus, I shall modify my Initial Award by directing that the parties share the Arbitrator's fees and expenses equally.⁴

*

*

*

*

*

*

*

⁴ To be clear, lack of timeliness was the Service's only objection raised either at hearing or on brief to the Union's request that the Employer pay the entirety of the Arbitrator's fees and expenses. No argument that the request was inappropriate under either the National Agreement or my Conditions of Appointment was voiced. Even its "punitive" remedy arguments were directed solely at the Union's request for a \$200 expense reimbursement, not its claim voiced at hearing that the Service should pay the entirety of the fees and expenses of the undersigned. Nor can I, as the selected arbiter of the dispute, invent arguments on behalf of a party lest I demonstrate a lack of neutrality in the matter. Moreover, as the Initial Award in this matter noted, the Union cited the decisions of other neutrals serving on the ID-MT-OR/WestPac Regular panel granting such requests in support of its request here. See, *Case No. E19N-4E-C 21364382/NALC Branch No. 21-645* (Baggett-Hayes, 2023); *Case No. E11N-4E-C 17573892/NALC DRT No. 02-412759* (Duffy, 2018). Although not precedential, I found those awards instructive. Moreover, as National Arbitrator Gamsler held in *Case No. NC-S-5426/C #3200* (1979), also cited by the Union herein:

It is necessary at the outset to dispose of one threshold contention raised by the Employer. It was contended that the agreement provides in Article XV that the arbitrator has no authority to add to, subtract from, or modify the terms of the agreement. So it does. That restriction upon the jurisdiction of the arbitrator must be scrupulously observed. However, to provide for an appropriate remedy for breaches of the terms of an agreement, even where no specific provision defining the nature of such remedy is to be found in the agreement, certainly is found within the inherent powers of the arbitrator. No lengthy citations or discussion of the nature of the dispute resolution process which these parties have mutually agreed to is necessary to support such a conclusion. *Sl. op.* at 7-8.

However, notwithstanding the foregoing, as noted, the modification request before me here was voiced jointly by the National Parties. Not only do they have full authority to speak for the contracting parties regardless of what transpired at hearing, including the authority to withdraw any remedy requests made there or on brief by the advocates, since their request for modification was jointly made, the doctrine of *functus officio* such as might preclude me from considering a unilateral request voiced after issuance of an award does not apply. Accordingly, the modification request will be granted.

AMENDED AWARD

- I. It is the Award of the Arbitrator that management violated Article 15 of the National Agreement as well as USPS policy letter M-01517 via Article 19 of the National Agreement regarding the compliance with Step B Decision E19N-4E-C 23360192 resolved on October 26, 2023.

- II. It is therefore Ordered that Management:
 - A. Make available for interview those witnesses originally requested by the Union who have not been interviewed and who continue to be employed by the Service within 10 days of this Award; and
 - B. Cease and desist refusing to comply with Step B Decisions.

- III. It is also Ordered that the parties share the Arbitrator's fees and expenses equally.

- IV. The Arbitrator hereby reserves jurisdiction for 30 days from the date of this Amended Award for the limited purpose of assisting the parties as may be necessary in compliance with the remedy directed above.



M. Zane Lumbley, Arbitrator, NAA

February 11, 2025
Dated