C-35086

REGULAR ARBITRATION

In the Matter of Arbitration	*	Christopher Hammond
Between	*	Gaithersburg – Diamond Farms
United States Postal Service	*	
	*	USPS Case No. K16N-4K-C 18481068
And	*	
National Association of Letter Carriers, AFL-CIO	*	NALC DRT# 13-452797

APPEARANCES:

Postal Service Advocate: Dave Preston

NALC Advocate: Walter Brummage

Place of Hearing: Gaithersburg, MD

Date of Hearing: January 14, 2021

AWARD SUMMARY

The grievance is sustained. A 28-day payment period for grievance settlements has been established as a precedent in Gaithersburg, MD.

Date of Award: March 29, 2021

David A. Stanton, Arbitrator

INTRODUCTION

These grievances arose under the 2016 National Agreement between the United States Postal Service (USPS or Postal Service) and the National Association of Letter Carriers, AFL-CIO (NALC or Union). Specifically, on May 24, 2018, NALC Branch 3825 filed Grievance No. K16N-4KC-18481068 (DRT#13-452797)) alleging Management violated Article 15 of the National Agreement by failing to promptly provide the monetary settlement for a grievance. The Union contended previous grievance settlements required an additional payment be provided for the delay. The Postal Service denied that precedent required such payment. The Step B team ultimately impassed the question of whether an additional remedy was required.

The grievance not being resolved at the earlier steps of the grievance procedure was scheduled for hearing on January 14, 2021, at the postal facility located at 16501 Shady Grove Road, Gaithersburg, Maryland 20898, before Arbitrator David Stanton. The parties had a full and fair opportunity to present argument and evidence; to engage in the examination and cross-examination of witnesses; and to present any and all arguments in support of their respective positions. The Union chose to orally closes while the Postal Service filed a post hearing brief. The record was closed on March 8, 2021 upon the Union's notification that a rebuttal brief would not be filed.

ISSUE

The issue in Grievance No. K16N-4K-C 18481068 is as stated in the Step B decision:

> Did the Postal Service violate Article 15 of the National Agreement and previous grievance settlements when they failed to provide a monetary settlement to the grievant within 28 days? If so, what is the appropriate remedy?

EXHIBITS PRESENTED

Joint 1	2016-2019 National Agreement – NALC and USPS
Joint 2	JCAM
Joint 3	Moving Papers (536 pages)

Joint 4 GATS payout records.

Union 1 Case No. S4N-3R-D 35445, Sobel, March 7, 1987

Union 2 Case No. K16N-4K-C 17700497, Drucker, December 16, 2019

Union 3 Case No. K16N-4K-C 18492871, Drucker, February 24, 2020

Union 4 Case No. K16N-4C-C 1771415, Roberts, January 5, 2020

APPLICABLE NATIONAL AGREEMENT PROVISIONS

Article 15 Grievance Procedure – Steps

Section 1.
A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.

Section 2.
Informal Step A
(b) In any such discussion the supervisor shall have authority to resolve the grievance. The steward or other Union representative likewise shall have authority to resolve the grievance in whole or in part. The local parties are not prohibited from using the Joint Step A Grievance Form to memorialize a resolution reached at an Informal Step A meeting. No resolution reached as a result of such discussion shall be precedent for any purpose.

(c) If no resolution is reached as a result of such discussions, the Union shall be entitled to file a written appeal to Formal Step A of the grievance procedure within seven (7) days of the date of the discussion. Such appeal shall be made by completing the Informal Step A portion of the Joint Step A Grievance Form. At the request of the Union, the supervisor shall print his/her name on the Joint Step A Grievance Form and initial, confirming the date of the discussion.

Formal Step A
(c) The installation head or designee will meet with the steward or a Union representative as expeditiously as possible, but no later than seven (7) days following receipt of the Joint Step A Grievance Form unless the parties agree upon a later date. In all grievances at Formal Step A, the grievant shall be represented for all purposes by a steward or a Union representative who shall have authority to resolve the grievance as

a result of discussions or compromise in this Step. The installation head or designee also shall have authority to resolve the grievance in whole or in part.

(d) At the Formal Step A 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 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 form jointly agreeing to interview additional witnesses as provided above.

(e) Any resolution of a grievance in Formal Step A shall be in writing and shall be noted in the Joint Step A Grievance Form, but shall not be precedent for any purpose, unless the parties specifically so agree or develop an agreement to dispose of future similar or related problems. If the grievance is resolved, a copy of the resolution will be sent to the steward and supervisor who initially were unable to resolve the grievance.

Step B

(a) Any appeal from an unresolved case in Formal Step A shall be in writing to the Step B team at the appropriate Step B office, with a copy to the Formal Step A representatives, and will include a copy of the Joint Step A Grievance Form, and shall specify the reasons for the appeal.

(b) The written Step B joint report shall state the reasons in detail and shall include a statement of any additional facts and contentions not previously set forth in the record of the grievance as appealed from Formal Step A. The Step B team will attach a list of all documents included in the file.

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).

Section 4. Arbitration

6. All decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator. Unless otherwise provided in this Article, all costs, fees, and expenses charged by an arbitrator will be shared equally by the parties.

BACKGROUND

On February 27, 2018, the parties resolved a grievance concerning the equitable distribution of overtime for quarter 4 (October – December) of 2017 at the Diamond Farms Station of the Gaithersburg Post Office. The resolution provided that five letter carriers would receive lump sum payments as compensation for the violations. Four of the letter carriers received their payment within 28 days of the written settlement. The grievant in this case, C. Hammond, was to receive $467.00. On May 24, 2018, Hammond had still not received his payment. The Union initiated this grievance on that date contending Management violated Article 15 of the National Agreement by not paying the grievance settlement to letter carrier C. Hammond in a timely fashion. The Union contends this delay warrants paying the grievant a "further compensatory remedy." Management contends the demand for an additional payment is punitive in nature and must be denied. The parties were unable to resolve the grievance at the lower steps of the grievance/arbitration procedure resulting in the instant arbitration hearing.

POSITION OF THE UNION

The only issue in dispute in this arbitration hearing is the appropriate remedy. Management has already acknowledged that Article 8 was violated because of the inequitable distribution of overtime in quarter 4 of 2017. Mr. Charles Chalk, Chief Steward and Vice President Branch 3825 testified that settlement in the Hammond grievance was reached in February 2018. The settlement was not input into the Grievance Arbitration Tracking System (GATS) until May 29, 2018 and was not paid until June 15, 2018. Chalk further testified that making timely settlement payments has been an ongoing issue in Gaithersburg for many years. According to Chalk the problem seems to be that Management is failing to take the step to input the settlement into GATS for payment. He further asserted there are settlement agreements on the issue of timely payment in the case file that go back to 2008.

The Union contends there is grievance precedent and arbitration precedent that establishes settlements are to be paid within 2 pay periods or 28 days. The Union further contends there are multiple grievance settlements providing for a money remedy to be paid to the grievant and the Union when settlements are not paid within 28 days.

Among the evidence in support of its position, Chalk stated that during a Labor Management meeting it was agreed 28 days was an appropriate time period to make payments. Moreover, a

Formal Step A resolution from August 6, 2015 used the words: "Henceforth management will effectuate pay adjustments to the union/employees within twenty-eight days, meaning money in hand within twenty-eight days."

Chalk further testified that the issue of late payments has been addressed multiple times in arbitration decisions. In a 2019 decision arbitrator Jacquelin Drucker addressed the issue of timely payments in a case where the grievant was paid 14 days past the 28-day deadline. The Union asked for an additional monetary remedy for the grievant as well an award of $1,000 for the Union. Drucker found the August 6, 2015 Formal settlement agreement discussed above to be binding with regard to the 28-day payment commitment.[1] Drucker addressed the issue a second time in a February 2020 decision and once again found the Postal Service violated the National Agreement and controlling settlements when the sum owed pursuant to a prior grievance settlement was not paid within the 28-day deadline.[2] In both cases she awarded the Union the "nominal sum" of $200. Finally, Arbitrator Lawrence Roberts determined the Postal Service was "arbitrary and capricious in the disbursement of Article 15 monetary settlements and awarded Branch 3825 $2,500.[3]

At the lower levels of the grievance procedure the Union demanded a "further compensatory remedy" for the alleged contractual violation. At the arbitration hearing the Union changed its remedy request to: "Management in the Gaithersburg installation will process grievance resolution pay adjustments in a timely manner." The Union contends changing the remedy request is not a new argument. The Union further contends that regional arbitration precedent supports the Union's entitlement to change the remedy request at the arbitration hearing. In Case No. S4N-3R-D 35445, Arbitrator Irvin Sobel stated:

> The arbitrator does not have to take the less than precise verbiage of a frequently inexperienced and sometimes technically unschooled Union Steward as gospel, either when that officer requests, far more than the grievant (or Union) is entitled to, or as in this comparatively rare instance, too little. In fact, arbitrators revise or modify (Union) requests far more often in a downward rather than an upward direction.[4]

---

[1] Case No K16N-4K-C 17700497, Drucker, December 16, 2019.
[2] Case No. K16N-4K-C 18492871, Drucker, February 24, 2020.
[3] Case No. K16N-4C-C 17714145, Roberts, January 5, 2020.
[4] Case No. S4N-3R-D 35455, Sobel, March 7, 1987.

when the request is received at the Accounting Service Center, the payment could be made within 28-days or it could be longer.

The Employer respectfully disagrees with the two Drucker arbitration decisions. According to Management:

> Management at all levels have vehemently disagreed with the way this so-called policy was initiated and reinforced by untechnical Management at the Gaithersburg Installation. Management did not specifically agree or develop an agreement to dispose of future or similar or related problems in the same manner by attempting to resolve some grievances at the lowest level. The file contains no such language in the Formal A settlement submitted by the Union for a remedy to be considered precedent setting of late payments to any Grievant.

Furthermore, the Postal Service argues:

> There is nothing in the settlement signed on referencing anything about "agreed payment-in-hand date" so therefore, this grievance should be denied. Prior Informal A and even Pre-Arbitration settlements are not precedent setting in an installation. Neither is a settlement that happened in other parts of a Union branch. The Union's reliance on Formal Step A settlements, to which the parties have not expressly attached precedent setting status, as evidence of a pattern of will disregard of the contract. Non-precedent setting grievance settlements were not intended to be used to influence future grievance settlements or be used to establish guilt in another case.

The Postal Service categorized the Union's requested remedies as being punitive and provided extensive argument and evidence about the inappropriateness of punitive awards in arbitration.

ANALYSIS

Remedy Changed at Arbitration

At the time the instant grievance was filed the Union requested "an additional compensatory remedy for the affected employee." At the arbitration hearing the Union requested the issue to be changed to "Management in the Gaithersburg installation will process grievance resolution pay adjustments in a timely manner." Management complains this changed remedy request amounts to a new argument being presented at the arbitration hearing and extensive national

level arbitration precedent forbids that from being done. The Union counters with a Regional arbitration decision that authorizes remedy changes at arbitration.

There does not seem to be any bright line rule or consensus of opinion concerning remedy changes at arbitration. It would seem the question would be largely answered dependent upon the individual factual circumstances of a particular case. If the remedy request is changed significantly it could amount to new argument. On the other hand, if the remedy request is a scaling back of a monetary demand, the Employer would be hard pressed to explain how the change placed them at a disadvantage. Management complains that the remedy amendment is an effort to broaden the grievance from affecting an individual employee to becoming a class action grievance.

At the beginning of the hearing the parties stipulated the issue to be decided in the case was:

> Did the Postal Service violate Article 15 of the National Agreement and previous grievance settlements when they failed to provide a monetary settlement to the grievant within 28 days? If so, what is the appropriate remedy?

The revised remedy request asks the arbitrator to make a declaratory statement that a 28-day payment rule exists in Gaithersburg, Maryland. The revised remedy request omits any monetary remedy. Given the narrower scope of the remedy request and the specific reference to 28 days in the issue statement. The Employer cannot claim surprise or be placed at a handicap defending its position in this case. Accordingly, the change in remedy is authorized in this case.

The 28-day Agreement

The Union contends a 28-day payment rule has been established by a Formal A settlement agreement and subsequent arbitration precedent. The Employer denies there is applicable Formal A precedent and criticizes arbitration precedent that suggests otherwise.

There were many Informal A settlement agreements in Gaithersburg that referenced a 28-day payment period for grievance settlements. The turning point, however, was an August 6, 2015 settlement agreement that included the following language: "Henceforth, management will effectuate pay adjustments to the union/employees within twenty-eight (28) days, meaning money in hand within twenty-eight days."

Arbitrator Drucker referenced this language in her first Gaithersburg award (February 24, 2020) stating: "This arbitrator views this as the parties' express statement of a commitment to future action, and, as it is set forth in a Formal Step 2 grievance settlement, it is binding." Drucker confirmed the 28-day rule in a second award a month later March 26, 2020).

The time has passed for criticism, argument, or analysis of the appropriate time period for paying grievance settlements in Gaithersburg, MD. The Drucker arbitration awards have established a 28-day payment precedent in Gaithersburg, MD. The Postal Service in Gaithersburg has proved it has the ability to comply with the 28-day payment period. Now it must do so on a regular and consistent basis.

AWARD

The grievance is sustained. A 28-day payment period for grievance settlements to be paid has been established in Gaithersburg, MD.

Date: March 29, 2021

David A. Stanton

David A. Stanton, Arbitrator