

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

Grievant: Class Action

between

Post Office: Middletown, NY

UNITED STATES POSTAL SERVICE

USPS Case No.: 4B 19N-4B-C 22229789

and

DRT No.: 15-572233

**NATIONAL ASSOCIATION OF LETTER
CARRIERS, AFL-CIO**

NALC Case No.: 5295-91

BEFORE: Amy Lynne Itzla, Esq.
Arbitrator

APPEARANCES:

For the U.S. Postal Service: Wellington Espinal, Labor Relations Specialist

For the Union: Frank Mongiello, Advocate

Place of Hearing: White Plains, NY

Dates of Hearing: September 23, 2022; December 13, 2022

Relevant Contract Provisions: Articles 15, 17, 31

Contract Years: 2019-2023

Type of Grievance: Contract

AWARD SUMMARY

1. The grievance is arbitrable.
2. The remedy requested by the Union for Management's violation of Articles 17 and 31 of the Agreement is not appropriate.

Dated: January 26, 2023

Amy Lynne Itzla, Esq.
Amy Lynne Itzla, Esq.
Arbitrator

The United States Postal Service (“the Service”) and the National Association of Letter Carriers, AFL-CIO (“the Union”), are parties to a collective bargaining agreement (“the Agreement”). The Agreement provides for the arbitration of unresolved grievances. In accordance, therewith, this Arbitrator was designated to hear and decide this matter. The parties appeared before the undersigned for an arbitration hearing on September 23, 2023, and December 13, 2023.

The parties had a full and fair opportunity to present evidence and argument, to engage in the examination and cross-examination of sworn witnesses, and to otherwise support their respective positions. All previous arbitration awards submitted by the parties in support of their respective positions have been fully considered.

ISSUES

The Step B Team of the Long Island-Westchester District Dispute Resolution Team (“DRT”) stipulated to the following issue and decision in its Step B Decision:

- ISSUE: Did Management violate Articles 17 and 31 of the National Agreement (NA) when they failed to provide information to the Union in a timely manner to investigate a grievance? If so, is the remedy requested appropriate?
- DECISION: The Dispute Resolution Team (DRT) declared an **IMPASSE, IN PART**. The Step-B Team has considered all arguments and evidence in the case file and any of this material may be cited in the event of arbitration. The NALC National Business Agent may file an appeal for this Grievance to arbitration within fourteen (14) days of this report. [*Emphasis in original*]
- The DRT agrees that Management violated Articles 17 and 31 when it failed to provide the Union with information in a timely manner.
- The DRT agrees that the case file does not demonstrate that a monetary remedy is appropriate in this grievance.
- The Dispute Resolution Team (UDM) cannot come to an agreement on the Union’s request for a Cease and Desist for this grievance.

The parties stipulated to the following remaining substantive issue for determination at the arbitration hearing:

Is the remedy requested by the Union for Management's violation of Articles 17 and 31 of the Agreement appropriate?

The Service raised a challenge to the arbitrability of the grievance, which it asserted as a threshold issue to be determined prior to proceeding with the grievance on its merits. The arbitrability argument presented by the Service was two-fold and can be summarized as follows:

1. The "Step B Decision Date," as indicated on the Step B Decision is May 18, 2022. The last day of the fourteen-day period during which the Union could file an appeal to arbitration was June 1, 2022. The Union's Request for Arbitration is dated June 3, 2022. Therefore, the Union's appeal to arbitration was untimely and the matter is not arbitrable.
2. There was a companion grievance to the instant grievance that was resolved by the DRT through a Step B Decision. Based on that resolution, the issue presented in this matter is moot and no longer arbitrable.

The decision on arbitrability was deferred until after the full hearing on both the arbitrability of the grievance and the substantive merits.

RELEVANT CONTRACT PROVISIONS

Article 15 Grievance-Arbitration Procedure

Section 2. Grievance Procedure - Steps

Step B:

- (b) The Step B team will review the appeal and issue a joint report of the decision and any supporting findings within fourteen (14) days of receipt of the appeal at Step B unless the parties mutually agree to extend the fourteen (14) day period. ----- It is the responsibility of the Step B team to ensure that the facts and contentions of grievances are fully developed and considered, and resolve grievances jointly.

- (d) The Union's National Business Agent (NBA) or designee may appeal an impasse directly to arbitration at the Grievance/Arbitration Processing Center within fourteen (14) days after the receipt of the Step B impasse in accordance with the procedure hereinafter set forth.

Article 17 Representation

Section 3. Rights of Stewards

The steward, chief steward or other Union representative properly certified in accordance with Section 2 above may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied.

Article 31 Union-Management Cooperation

Section 3. Information

The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this agreement. Upon the request of the Union, the employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information.

BACKGROUND

On or about March 8, 2022, the Service notified the Union that there would be a change in start times for carriers effective March 12, 2022. Following an exchange of emails and some documents provided by the Service, the Union presented a request for information by email dated March 21, 2022. It was submitted a second time by email dated March 24, 2022. The record contains numerous subsequent emails between the parties pertaining to the production of requested information.

The Union's grievance was filed on April 15, 2022, ("the information request grievance"). The USPS-NALC Joint Step A Grievance Form was dated May 13, 2022, the date of the Formal Step A Meeting Date, and contained the following issue:

1. Did management at the Middletown Post NY Post Office violate Articles 17 and 31 of the National Agreement by failing to furnish relevant, requested information in a timely manner, and if so, what should the remedy be?

The record contains the parties' contentions, which include a chronology of requests for information submitted by the Union to management and management's responses.

The grievance proceeded to the Step B Team and, as noted above, the only unresolved portion was the issue related to the "Cease and Desist" remedy sought by the Union.

In addition to the Union's information request grievance, the Union also filed a grievance directly challenging the change in carrier start times and alleging violations of Articles 3, 5, and 19 ("the start time grievance"). [USPS Number: 4B19N-4B-C 22202199/Branch Grievance Number: 5295-88] The Step B Decision for that grievance shows a "Date Informal Step A Initiate" of April 29, 2022. Following the initiation of the two grievances, they both had the same "Formal Step A Meeting Date" of May 13, 2022, "Date Received at Step B" of May 16, 2022, and "Step B Decision Date" of May 18, 2022. The two grievances moved in parallel through the DRT process, with the same Step B representative for the Service, but with two different Step B representatives for the Union.

The Step B Team framed the issue and decision in the start time grievance as follows:

ISSUE: Did management at the Middletown, New York (NY) post office (PO) violate Articles 3, 5, and 19 of the National Agreement (NA) when they unilaterally changed the Start Times for all City Carriers at the Middletown, NY PO? If so, what shall the remedy be?

DECISION: The Dispute Resolution Team (DRT) has **RESOLVED** this grievance. The grievance has merit. Management violated Article 19 of the NA, specifically Section 122.11 of the M-39 when they arbitrarily changed the Carrier Start Times effective March 12, 2022 while the COVID MOUs were still in effect. Management is directed to reinstate the Start Times at the Middletown, NY PO to 8:00 AM for all Letter Carriers no later than fourteen (14) days from the receipt of this instant decision.

Management will process a Pay Adjustment for Out-of-Schedule Premium for any Full Time Regular Carrier whose Start Time was changed from 8:00 AM to 8:30 AM from March 12, 2022 to the day the Start Times are reinstated to 8:00 AM.

The DRT awarded the complete remedy sought by the Union in the start time grievance.

DISCUSSION

The Union presented the testimony of Rich Maffei, Union Steward, and Joseph DeStefano, President, NALC Branch 137. The Service did not present witness testimony.

The procedural issues raised by the Service must be addressed as a preliminary matter. The first arbitrability argument asserted by the Service is based on the period of time that lapsed between the Step B Decision Date, May 18, 2022, and the Union's appeal to arbitration. During the arbitration hearing, evidence was presented to establish that the Step B Decision Date indicated on the Step B Decision was not an accurate reflection of the date on which the

decision was issued. It was the date on which the initial preparer of the document completed it. Since it was the decision of the DRT, and must be signed by both parties' representatives, it was not a "decision" until fully executed. The document does not include dates accompanying the signatures. The record established that the Service's Step B representative was out of the office and the document was not completed or signed until on or about May 31, 2022. The USPS tracking information for the DRT's Step B file shows that it was sent to the Union on June 1, 2022, and delivered on June 2, 2022. The Union's "Request for Arbitration," dated June 3, 2022, was timely filed within the parameters of Article 15 of the Agreement.

The second argument raised by the Service regarding arbitrability is that the start time grievance was a "companion grievance" to the instant grievance. Since the start time grievance was resolved by the DRT through a Step B Decision, the Service maintains that the instant grievance has been rendered moot. The "UNION CONTENTIONS" listed in the DRT's Step B Decision in the start time grievance included the chronology of information requests and responses that are the subject of the information request grievance. Likewise, the "MANAGEMENT CONTENTIONS" contained in the DRT's Step B Decision in the start time grievance included the Service's response regarding the information requested and provided. The Service asserts that the contentions of the instant grievance are entirely intertwined with the start time grievance. The DRT was presented with both parties' positions on the information request in the start time grievance. Clearly, there was no prejudice or harm to the Union connected to the information request in the processing of the start time grievance, since the Union was awarded the complete remedy sought. In fully resolving the start time grievance, all issues, including those related to the processing of that grievance, were resolved. However, while this Arbitrator might find this argument potentially compelling under different circumstances, the parties, through the DRT, chose to handle these grievances separately and to consider and determine the information request grievance on its merits despite the resolution of the start time grievance.

In this case, the DRT did not reach an impasse on the question of whether there was a violation of Articles 17 and 31 of the Agreement. By reaching a decision on that issue, they did not consider it to be subsumed by the start time grievance or rendered moot by its resolution. It was processed, discussed, and decided independently on its merits. Therefore, this Arbitrator will not reach a finding contrary to that of the parties. The resolution of the start time grievance does not affect the arbitrability of the instant grievance.

Although the Union continued to seek a monetary remedy during the arbitration of this grievance, the DRT had already decided that a monetary remedy was not appropriate. Therefore, the sole remaining issue is the request for a remedy of a "cease and desist" order.

The Union's pursuit of the instant grievance is unrelated to the actual impact of its information request and the Service's response in this case. The facts giving rise to this grievance were stated in the Union's contentions attached to the USPS-NALC Joint Step A Grievance Form, as follows:

1. Management violated Articles 17 and 31 of the National Agreement by failing to provide the relevant, requested information to the Union. President DeStefano, who is certified under Article 17.2, properly requested information that was necessary to investigate/process a grievance.
2. The Union contends not only that Management is required to provide the information associated with this grievance, but they must also do so "in a timely manner," and "as soon as is reasonably possible" as set out in Article 17 of the National Agreement and further jointly explained in the JCAM.

Management never provided the PS Form 4533s that were requested on March 21, 2022, and the latest Adjustment Analysis Report that was requested on March 25, 2022, was not supplied until 39 days after they were requested. This information could have been very important in the investigation of grievance 5295-88.

Even in its contentions, the Union was not alleging harm from the processing of the information request. The grievance states, in part, that, "This information could have been very important in the investigation of grievance 5295-88." [*Emphasis added*]

The Union is asking this Arbitrator to order the Service to cease and desist from violating Articles 17 and 31. The Service is bound to the Agreement and its provisions. The contractual rights and responsibilities to which the parties have agreed are subject to challenges if there is a breach. The Service's obligations under the provisions at issue are the same today as they were when this case arose, and they will be the same tomorrow. The language to which the parties agreed will remain intact until such time as the parties agree otherwise. While the Union reiterated throughout the arbitration process that it is "only" seeking an order of "three words," "cease and desist," the intent is that those three words will lay the foundation for potentially greater penalties in the future. What would follow is that the Union would use a cease and desist order, in this case, to establish in a future case that the Service has continued or repeated to violate the Agreement. As future remedies, the Union would seek progressively harsher penalties for the violation of the same contract provisions, arguing that there is no other way in which to enforce the contract and deter further violations. The problem with this remedial consequence is that the parties did not choose to include such consequences in their Agreement. The Union is seeking, in effect, that a penalty system be added to the Agreement

through the grievance process. The Step B Decision contains the following: “The Union must have a Cease and Desist to ensure future compliance.”

The following portion of the Service’s argument is echoed in this decision:

What the Union is asking is for a ruling that considers events that have not yet occurred. If in the future the Union feels aggrieved and believes that Articles 17 and 31 were violated that future event can be grieved in accordance with Article 15. That is our grievance machinery. This is the system that the parties have agreed to abide by.

Under Article 15.4.A(6)., “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.” It would be improper for the Arbitrator to issue a decision that would strengthen or weaken the contract language to which the parties agreed. The parties’ Agreement must be applied as written.

AWARD

1. The grievance is arbitrable.
2. The remedy requested by the Union for Management’s violation of Articles 17 and 31 of the Agreement is not appropriate.

Accordingly, the grievance is denied.

Dated: January 26, 2023

Amy Lynne Itzla, Esq.
Amy Lynne Itzla, Esq.
Arbitrator

State of New York) ss:
County of Westchester)

I, Amy Lynne Itzla, do hereby affirm upon my oath as Arbitrator that I am the individual described in and who executed this instrument, which is my Award.

Dated: January 26, 2023

Amy Lynne Itzla, Esq.
Amy Lynne Itzla, Esq.
Arbitrator