

In the Matter of the Arbitration
between
AMERICAN POSTAL WORKERS UNION, AFL-CIO
and
UNITED STATES POSTAL SERVICE

Case No. HBC-NA-C-61

C 937
OPINION AND AWARD

DEC 28 1982

APPEARANCES:

For the APWU - Thomas Freeman, Jr., Exec. VP, Mtce Craf
Anton G. Hajjar, Esq.

For the USPS - C. B. Weiser, Labor Relations Representative

Background:

This case was brought on for arbitration by the APWU, in a grievance subject to disposition at the National Level, challenging the force and effect which the Postal Service allegedly bestowed upon EL-501, a publication entitled SUPERVISOR'S GUIDE TO ATTENDANCE IMPROVEMENT which was published in November of 1980.

In this proceeding, the Union sought to have the Arbitrator either declare that the publication was void and of no significance in the appropriate interpretation and application of Article 10 of the National Agreement and parts of Chapter 510 of the Employee and Labor Relations Manual, or to declare that certain provisions of EL-501 were neither fair, reasonable and equitable or in conflict with the requirements and provisions of the National Agreement and pertinent Handbooks and Manuals.

The Union asserted that, even if the Postal Service were to make an unequivocal declaration that the EL-501 was not a handbook, the Union contended the publication placed the USPS in violation of Article 5 of the Agreement as a prohibited unilateral modification of Article 10 of the Agreement as well as also being a violation of Article 19 by amending certain provisions of chapter 510 of the ELM without taking the necessary steps to do so.

In response to this grievance, the Postal Service argued that it was not arbitrable because the National Agreement did not give the arbitrator authority to determine anything about the issuance of this Publication which was not, according to the Service, promulgated to supersede existing handbooks, manuals or postal regulations. It was written, stated the USPS, for the sole use of non-bargaining unit employees, i.e., certain supervisory personnel. The Postal Service argued that only those Handbooks, Manuals and published Regulations that directly relate to wages, hours or working conditions, as these apply to employees covered by the National Agreement, come within the purview of Article 19 of that Agreement.

The Postal Services also claimed that the Union has not established that this Publication's contents breach the National Agreement and denies that they do so. The Service further stated that it had not placed reliance upon the directives or information contained in EL-501 as a guide to the interpretation of the terms of the National Agreement.

Statement of the Case:

The EL-501, dated November of 1980, was sent to the Union with a cover letter from Assistant Postmaster General Gildea, dated November 21, 1980, in which he said that the publication was not "intended to alter existing Postal Service regulations." The Union concluded, however, that this publication had every earmark of a contract status handbook. It was printed with the same format as a handbook, it was given a handbook number, and was referred to by the Postal Service as a handbook. It was sent to the Union via the same transmittal process as it received handbooks, manuals and regulations to which it felt obliged to respond under the provision of Article 19 of the Agreement.

The subject matter of this publication was concerned with procedures governing leave and attendance. In Postal Bulletin #21274 of December 4, 1980, it was identified as a handbook. This was also true in the USPS Directives, Publication 23, dated October, 1981. More significantly in cases arising in Las Vegas and Pittsburgh local postal management cited the provisions of EL-501 in determining employee rights and obligations as they relate to leave and attendance at those facilities. 1/

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1/ On January 28, 1981, in denying a Step 2 grievance, the MSO Officer in Charge at Las Vegas cited "Handbook EL-501" as one of the authorities for the action taken against the aggrieved. Similarly, on December 7, 1981, at Pittsburgh, the Director of Employee & Labor Relations referred to EL-501 as providing guidance in the disposition of a grievance.

When it looked like a handbook, was given a handbook number, and was called a handbook, officials of the APWU believed it was necessary to check the contents of the Publication to determine whether any of its provisions were in conflict with the requirements of the National Agreement, existing handbooks and manuals and postal regulations. After examining EL-501, the APWU requested a meeting, under the provisions of Article 19, because it felt that certain provisions of EL-501 violated the National Agreement. The Union had drawn up a document in which it identified the alleged areas of conflict between EL-501, the F-21 and 22 Handbooks, provisions of the National Agreement, sections of the ELM, and practices which had been recognized in dealing with leave and attendance as having achieved widespread acceptance throughout the Postal Service.

At subsequent meetings with Postal officials, the Union did not succeed in getting an agreement, under Article 19, or under the provisions of Article 15, that the Publication should be withdrawn or that certain of its provisions be revised so that they were not in conflict, in the Union's opinion, with the National Agreement, or the contents of manuals, handbooks and regulations, or with practices which had been accepted and now had the force of law.

The Postal Service persisted in its position that this Publication was an internal management communication meant only for the guidance and assistance of management and supervisory personnel in handling attendance and leave issues. The Postal Service refused to address the Union's position under either Article 19 or as a grievance to be processed pursuant to the provisions of Article 15.

Opinion of the Arbitrator:

At the outset it is necessary to state that supervision or management personnel may certainly be instructed by Headquarters in an effort to minimize scheduling difficulties which may be caused by absences of various kinds. Apparently, in part, that was a purpose to be accomplished by the publication of EL-501. In such an attempt to promote greater scheduling effectiveness, however, management and supervision must act within the strictures and requirements of pertinent provisions of the National Agreement as well as handbooks, manuals and regulations issued in accord and dealing with the subject of leave and attendance. These are acknowledged terms and conditions of employment.

In the issuance of EL-501 in its current format and the way it was subsequently identified in official publications, unfortunately, the Postal Service created some ambiguity, at the least, about how this document was to be regarded by the Unions, management and employees covered by the National Agreement. Quite obviously, the Unions felt it had to be treated as a handbook promulgated under the terms of Article 19 and to take issue with its contents under that provision as a defensive measure. Management, as well, judging by the reference to this Publication in the Las Vegas and Pittsburgh cases, referred to in footnote 1 above, believed that it had been incorporated by reference into the Agreement pursuant to the provision of Article 19.

The reluctance of management to state unequivocally, in its meetings with the Union, that EL-501 was not a handbook, having the force and effect of one coming under the aegis of Article 19, lent credence to the Union's fear that it certainly would be so regarded in the field and would have a deterrent effect upon the manner in which employees acted regarding their leave and attendance rights and privileges.

During the course of this arbitration proceeding, the Employer spokesman labeled EL-501 as a "secondary authority" on the manner in which the terms of the National Agreement and related handbooks, manuals and regulations, regarding leave and attendance, were to be viewed and enforced. The Postal Service cannot have it both ways. If it is only an internal management communication to supervisory and managerial personnel, outside the bargaining unit, it cannot be considered as a primary, secondary or even tertiary authority upon which management can rely in interpreting and administering the Agreement.

If nothing in EL-501 is intended to alter the leave regulations in Chapter 5 of the ELM, it must be apparent to all concerned, including the Unions and employees covered by the National Agreement, that should be made abundantly clear. If supervisors act in accord with the instructions contained in EL-501, and such actions are in conflict with or violative of the provisions of the Agreement, pertinent handbooks, manuals, regulations, awards, or controlling practices, then they do so subject to a successful challenge under the provisions of Article 15 of the Agreement.

Management agreed, as a practical matter, to waive the question of whether this conclusion could be reached in this Article 19 grievance.

In the Award below, Management shall be directed to dispel any confusion which presently exists about the force and effect of this Publication as it relates to handbooks issued and subject to the terms of Article 19 of the National Agreement.


The Union also clearly intended in this arbitration proceeding to have the Arbitrator instruct the Postal Service to alter certain of the instructions contained in EL-501 because they were in conflict with the provisions of the National Agreement or pertinent handbooks, manuals, regulations, awards or controlling practices. In effect, the Union presented its study of the alleged manner in which certain provisions of the Publication were in conflict with the terms of the documents or practices mentioned above as a bill of particulars and requested that the Arbitrator direct the USPS to amend EL-501 accordingly. This the Arbitrator cannot do. In effect, the Union is asking for a declaratory judgment regarding these allegedly conflicting provisions of EL-501. Such a determination has been consistently held inappropriate in an arbitration proceeding. Armed with the knowledge that EL-501, by virtue of the Award in this proceeding, cannot be cited as an authority for the manner in which the leave and attendance requirements of the National Agreement are to be interpreted or applied, challenges to management's actions in this area must be pursued on a case by case basis under the provisions of Article 15.

Therefore, after due deliberation, the Undersigned makes the following

A W A R D

1. The Employer shall promulgate an official document in which it clarifies the status of EL-501, making it clear that it is not to be regarded by management, the Unions, or employees covered by the National Agreement as a handbook having the force and effect of such a document issued pursuant to Article 19. Copies of such promulgation shall be furnished to the Unions concerned.

2. For the reasons stated in the Opinion above, no findings or conclusions can be drawn as to whether the contents of EL-501 conform to or are in conflict with the terms of the National Agreement, handbooks, manuals, regulations, awards or controlling practices.


Howard G. Gamser, Arbitrator

Washington, DC
December 27, 1982