C#05949

IN THE MATTER OF AN ARBITRATION	)	RE: Case No. W1N-5H-C 30350
	)	Robert Quesada
Between	)	SAN JOSE, CA
	)	
UNITED STATES POSTAL SERVICE	)	AWARD OF THE ARBITRATOR
	)	
And	)	
	)	
NATIONAL ASSOCIATION OF LETTER CARRIERS	)	December 12, 1985

This matter came on for hearing on August 8, 1985 before Arbitrator David Goodman. The United States Postal Service (hereinafter the "Employer") was represented by James C. Williams and Terry E. Bickelman, and the National Association of Letter Carriers (hereinafter the "Union") was represented by William H. Young. The parties stipulated that all steps in the grievance procedure had been complied with in a timely manner and this matter was properly before the Arbitrator for a final and binding Award.

WITNESSES

Beverly Imperato, Director of Employee Labor Relations
Robert Quesada, Grievant

CONTRACT PROVISIONS

ARTICLE 15

GRIEVANCE-ARBITRATION PROCEDURE

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 settlement or withdrawal of substantially all grievances initiated hereunder at the lowest possible step and recognize their obligation to achieve that end.

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ARTICLE 36

CREDIT UNIONS AND TRAVEL

Section 2. Travel, Subsistence and Transportation

B. Except as subsequently provided by the USPS Methods Handbook, M-9 Travel, employees will be paid a mileage allowance of $.225 per mile for the use of privately-owned automobiles for travel on official business when authorized by the Employer.

STATEMENT OF FACTS

The Grievant, Robert Quesada, is a letter carrier and union steward. In August, 1984 he filed a grievance when management failed to return him to a light duty assignment at the Hillview Station upon his completion of a voluntary temporary assignment at the City Delivery Office. The grievance was resolved at Step 3 on October 5, 1984 as follows:

> Because of the grievant's limitations he has been placed on light-duty work. As the designated shop steward at Hillview Station .,[sic] . . he is to be returned to that station upon receipt of this decision. If there is no light-duty work for which the employee can perform, alternatives should be considered and communications made to him and the local NALC business representative. This decision resolves the grievance. (Joint Exhibit 2(f))

This communication was received by local management no later than October 15, 1984.[1] Grievant was not returned to the Hillview Station until October 25, 1984.

On November 11, 1984 the instant grievance was filed, alleging that the Employer violated Article 15, Grievance-Arbitration Procedure, by not returning Grievant to the Hillview Station immediately upon receipt of the Step 3 decision and requesting that "grievant be awarded

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[1]The communication shows both an October 11, 1984 and an October 15, 1984 time stamp.

compensatory time and mileage allowances for the inconvenience incurred" (Joint Exhibit 2(e)). The Employer denied the grievance at Step 2, alleging it could not immediately return Grievant to his regular duty station because of his work limitations and noting that only eight days elapsed before work became available (Joint Exhibit 2(d)). The grievance was appealed to Step 3, with the Union contesting the claim of "no work," and specifically requesting that Grievant be awarded nine hours and forty minutes of compensatory time and a mileage allowance of 184 miles (Joint Exhibit 2(c)). The Employer denied the grievance at Step 3, essentially for the same reasons presented at Step 2 (Joint Exhibit 2(b)), and the case was then appealed to arbitration (Joint Exhibit 2(a)).

Presented at the hearing as part of the grievance file was a document Grievant had prepared showing his breakdown of expenses as shown on the following page.[2]

In its opening statement the Union explained that the figures represent the difference between the mileage and travel time from Grievant's home and his alternative work sites, and his home and the Hillview Station. The Union requested he be compensated at twenty-two and one-half cents per mile pursuant to Article 36.2(B) and at his hourly wage for time spent en route.

The Employer called Grievant to testify as part of its case in chief, and both parties questioned him extensively on the method he used to arrive at his calculations. To be frank, Grievant's responses were not at all consistent. Though he initially asserted that both the

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[2]All mileage is based upon a round trip.

Dates	Assignment	Mileage	Travel Time
10/11	off	0	0
10/12	CFS[3]	16	40 min.
10/13	CFS	16	40 min.
10/14	off	0	0
10/15	CFS	16	40 min
10/16	CFS	16	40 min.
10/17	C/P[4]	20	1 hour
10/18	C/P	20	1 hour
10/19	off	0	0
10/20	off	0	0
10/21	off	0	0
10/22	C/P	20	1 hour
10/23	C/P	20	1 hour
10/24	C/P	20	1 hour
10/25	Hillview	0	0
11/2[5]	Hillview	20	1 hour
	(Total)	184	(Total) 9 hrs. 40 min

(Joint Exhibit 2(g))

[3]CFS is the Alma Station.

[4]C/S is the Cambriar Park Station.

[5]Represented as the time and mileage needed to pick up his paycheck from Cambriar Park Station.

mileage and time spent en route were carefully "clocked," Grievant then indicated that the times were clocked but not on the days in question. He later admitted the times were estimated, opining that it took approximately thirty to forty minutes, with a "maximum" of forty minutes to travel between his home and Cambriar Park, and thirty minutes to travel between his home and Alma Station. Grievant reported that he then deducted the time spent in travel between his home and Hillview, estimated at ten minutes one way, in order to arrive at his reported round trip times.

Grievant's testimony with regard to the reported mileage was likewise somewhat contradictory. He at first stated it was 2.1 miles between his home and Hillview, but then said it was 1.5 miles. The miles to CFS were originally reported as eight each way, then ten each way, with Grievant purportedly subtracting the distance between his home and Hillview to reach the round trip distance of sixteen miles. The distance from his home to "C/P" was initially reported as ten miles, then amended to be between ten and eleven miles.

Beverly Imperato, Director of Employee and Labor Relations, testified that employees are responsible for travel to and from work and commuting expenses are not compensated by the Employer. Introduced into evidence was Section 438.12, Commuting To and From Work, of the Employee and Labor Relations Manual, which, in pertinent part, provides:

> Commuting time before or after the regular work day between one's home and official duty station, or any other location within the local commuting area[6] is a normal incident of employment and not compensable . . . (Employee Exhibit 1)

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[6]Defined as a radius of 50 miles from the duty station.

On cross-examination, however, Imperato recalled that pursuant to a Step 3 decision, employees who were required to report to the Cupertino Station had been compensated for mileage.

POSITIONS OF THE PARTIES

The Union maintains the record clearly establishes that the Employer violated the mandate of the Step 3 Decision by failing to return Grievant to Hillview until October 25, 1984. While acknowledging that Grievant was somewhat "confused" about his times and distances, the Union nonetheless contends that as a result of the violation, Grievant suffered loss of mileage and time and is therefore entitled to be made whole. Citing the precedent established in the Cupertino Settlement, the Union argues that to deny Grievant a make-whole remedy would allow the Employer to freely disregard its obligations under future settlement decisions or agreements. Accordingly, it requests that the grievance be sustained and Grievant be awarded the requested remedy.

The Employer admits it did not comply with the Step 3 decision and also admits that work was available for Grievant to perform at the time of the Step 3 decision. It argues, however, that the Union has failed to meet its burden of proving the sought-after remedy is one which the Employer is authorized to grant. Commuting time, for example, is not compensable, as there is nothing in the Agreement which commands it. Nor can the Cupertino Settlement serve as precedent; it was a unique situation not applicable to light duty placements and only involved mileage from work site to work site. The Employer also contends that Grievant's testimony was not credible, and hence his alleged harm,

especially the claim for compensable time, has not been proved. Accordingly, it requests that the grievance be denied in its entirety.

ISSUE

As the parties were unable to agree upon an appropriate issue, the following is the issue adopted by the Arbitrator:

Did the Postal Service violate the Agreement? If so, what is the appropriate remedy?

DISCUSSION AND CONCLUSIONS

In a contractual dispute, an arbitrator is generally called upon to decide whether a violation of the Agreement has occurred and, if so, what remedy, if any, is appropriate. Here, there is no dispute that local management was directed to return Grievant to the Hillview Station "upon receipt" of the Step 3 decision. Although the decision was received on October 15, 1984, Grievant was not returned to Hillview until October 25, 1984. Equally important, the Employer admitted for the first time at the hearing that there was, in fact, available light duty work for Grievant. Thus, the delay in returning Grievant to Hillview was simply not justified.

It should hardly need mention that Article 15, Grievance-Arbitration Procedure, Section 3(a), recognizes the need for "good faith observance" of the various grievance steps in the hope that "settlement or withdrawal of substantially all grievances" will occur. Surely, then, when such a settlement is achieved through decision at one of the grievance steps, the grievant is entitled to expect compliance within a reasonable time thereafter. And, when the decision mandates compliance upon receipt,

there is a violation if anything less than immediate compliance results. Indeed, to suggest otherwise would be counterproductive to the goals of the parties as set forth in Section 3(a). Accordingly, while the record is barren of any indication of bad faith, the Employer nonetheless failed to adhere to its obligations under a decision settling the grievance, and in doing so, violated the Agreement.

The crux of this dispute is whether Grievant is entitled to a remedy, and, specifically, whether his requested relief--compensation for the inconvenience and expenses incurred during the period management delayed implementation of the Step 3 decision--is warranted. The Arbitrator is persuaded that some relief is appropriate as there was absolutely no justification for this foot dragging. Granted, the ten-day delay may appear a "de minimus" violation from management's perspective, yet from Grievant's perspective he suffered harm and is therefore, entitled to be made whole.

Absent wholesale and repeated violations of the Agreement, it is generally recognized that a remedy must be compensatory rather than punitive, and hence limited to that which is necessary to put the employee in the position he would have been but for the violation. Under the circumstances, the Arbitrator concludes that an award of mileage is proper. The parties have negotiated a rate of twenty-two and one-half cents per mile in Article 36.2(B), albeit for official business authorized by the Employer. Nevertheless, the reasonableness of the amount has been established. This, along with the Cupertino Settlement, which suggests that there is some precedent for a mileage remedy, forms the basis for this award. Grievant, however, is not entitled to the 184

miles requested. The mileage listed prior to October 15, 1984 is rejected, as the time stamps show management had not then received the Step 3 decision and was not obligated to act until it did. Nor is Grievant's mileage of November 2, 1984 properly included, since he was returned to Hillview on October 25, 1984, but he elected to travel to Cambriar Park to pick up his paycheck rather than have it mailed or transferred to him at Hillview. Of the remaining dates, the Arbitrator finds that the miles shown on the Union's chart (Joint Exhibit 2(g)) should not be accepted, due largely to the inconsistencies in Grievant's listing. Travel between his home and Hillview is a normal part of Grievant's employment and not compensable. Grievant initially testified that this distance was 2.1 miles, and while he revised the figure, the Arbitrator is inclined to use it in adjusting his "round trip" mileage as follows:

10/16	12 miles	10/22	16 miles
10/17	16 miles	10/23	16 miles
10/18	16 miles	10/24	16 miles
		TOTAL	92 miles

In summary, Grievant is entitled to ninety-two miles at twenty-two and one-half cents per mile, or $20.70.

Grievant has also requested nine hours and forty minutes of "travel time" to be paid at his hourly rate for the inconvenience incurred by the delay. Because of Grievant's contradictory and ever-changing accounts of his travel time and how he derived these figures, it is difficult to credit his computations. Certainly, additional time was spent en route, which would not have been incurred if management had complied promptly

with the Step 3 decision. Granted, unlike mileage, no provision in the Agreement provides for any rate with respect to travel time, nor does it appear that this issue was addressed in the Cupertino Settlement.

However, it cannot go unnoticed that management breached its commitment to the "good faith observance" of the grievance process when it delayed Grievant's return to the Hillview Station. At first, it was the excuse that there were no light duty assignments for Grievant to perform--a "fact" immediately disputed by Grievant and the Union and later conceded by the Employer. Thus, since work was available for Grievant to perform from October 15 onward, there was simply no justification for management's action or lack thereof. Clearly management was creative in making adjustments in the Cupertino situation when there was no contractual mandate for that type of relief, and yet creativity was left by the wayside here. Granted, Grievant lost no work time by management's delay, but surely additional time was devoted to meeting his assigned activities at the other stations. Accordingly, having found a violation of the Agreement, the Arbitrator is within his power and authority to fashion an appropriate award to remedy the violation.

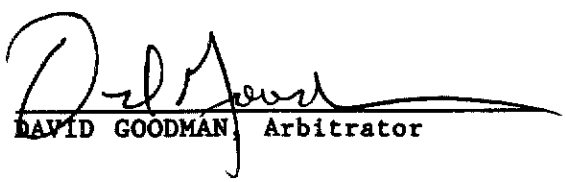
In determining the amount of time for which Grievant should be compensated, the Arbitrator has once again looked only to the six work day period between October 16 and October 24. While Grievant's chart indicates a total of five hours and forty minutes, once again, his testimony was not convincing. Since he is entitled to relief, the Arbitrator has used the mileage figure (ninety-two miles) and assumed a rate of speed through city streets of twenty miles per hour. Thus, Grievant is to be compensated for four and one-half hours at his then

Grievant is to be compensated for four and one-half hours at his then straight time hourly rate of pay.

AWARD

The Grievance is sustained. Grievant is entitled to be reimbursed his mileage of ninety-two miles at twenty-two and one-half cents per mile ($20.70) in addition to four and one-half hours pay at his straight time hourly rate.

RESPECTFULLY SUBMITTED,



DAVID GOODMAN, Arbitrator