

C# 11012

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration)
between)
UNITED STATES POSTAL SERVICE)
and)
AMERICAN POSTAL WORKERS UNION)

GRIEVANT: LUCAS, L.
POST OFFICE: MECHANICSBURG, PA.
CASE NO: E7C-2E-C 18954

BEFORE: WALTER H. POWELL ARBITRATOR

APPEARANCES:

For the U. S. Postal Service: THOMAS L. BARNHART, MSC Dir. HumannRes

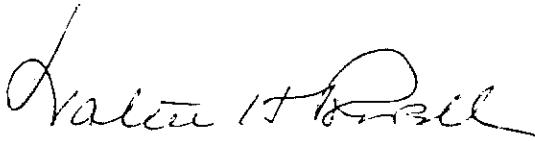
For the Union: JIM BURKE, National Business Agent

Place of Hearing: HARRISBURG, PA.

Date of Hearing: NOVEMBER 16, 1990

AWARD: GRIEVANCE IS GRANTED. THE REMEDY IS THAT THE LETTER OF DEMAND ISSUED TO L. LUCAS BE RESCINDED AND DECLARED NULL AND VOID.

Date of Award: November 26, 1990.


Arbitrator

ISSUE

DID THE POSTAL SERVICE VIOLATE THE NATIONAL AGREEMENT AND OTHER POSTAL REGULATIONS WHEN IT ISSUED A LETTER OF DEMAND TO THE GRIEVANT, LINDA LUCAS? IF SO, WHAT SHALL THE REMEDY BE?

FACTS AND BACKGROUND

On December 8, 1988, the following letter was sent to the grievant;

Subject Stamp Credit Examination Tolerance
Shortage Flexible Credit

TO: Linda Lucas
Distribution Window Clerk
191-46-3085
Mechanicsburg, PA. 17055-9998

The audit of your flexible credit conducted on December 8, 19988 revealed a shortage of \$ 384.96

In accordance with F-1 Handbook, Appendix D-134, you are hereby notified to replace this shortage on or before January 7, 1989.

This letter is being sent by Certified Mail. A copy of this letter is being sent by regular mail.

(signed) Kenneth K. Steckline, Sup't Postal Operations.

At the early steps of the grievance procedure, grievant offered several defenses, such as taking medication, and the stress she suffered because of an occupational injury. At the

arbitration hearing, the advocate for her Union contended that the procedural errors were of such magnitude and significance that they marred the whole procedure and that they intended to defend the grievant's rights based on the procedural defects.

The Postal Service claimed that these arguments were not originally raised at the preliminary steps of the grievance procedure and thus were improper to be raised at the arbitration hearing. Management did not deny that the Letter of Demand sent to the grievant was deficient in that it did not contain exact language which would have instructed her in how to grieve. Management did inform the grievant verbally over the telephone of her right to grieve and put her in touch with her shop steward.

The arguments presented by the Union, include the introduction of many arbitration awards, interpretations and citations directly related and applicable to the Postal rules and regulations regarding Employer Claims. Based on the preponderance of prior adjudications in their favor; the Union chose not to defend on the merits but to assert the procedural deficiencies and the disregard and neglect by management of its own rules and regulations.

Position of the UNION: The rules, regulations and procedures which govern the issuance of a Letter of Demand are clearly spelt out in the National Agreement and other Manuals incorporated by reference through Article 19 of the National Agreement. These rules and regulations spell out in great clarity the requirements

and prerequisites necessary to enforce and collect on a Letter of Demand. The failure to adhere to these requirements creates a procedural error which is prejudicial to the rights of the grievant and the Letter of Demand must be cancelled and dismissed when these obligatory steps have not been taken.

Position of the POSTAL SERVICE: Grievant was accorded every courtesy and all information with respect to her appeal rights. It is true that they were given verbally rather than being committed to writing. Grievant's response to the original demand were non responsive they were excuses rather than reasons. If she suffered any incapacities due to medication she never brought this to the attention of her supervisors.

To accede to the Union's position would be to reward carelessness and negligence by a postal employee. The irregularities in grievant's accounts were continually brought to her attention. Her failure to exercise proper care should not be rewarded by cancellation of her obligations for her own behavior.

DISCUSSION AND OPINION

There are significant rules, regulations and procedures which govern the care and custody of postal funds, stamps and other property entrusted to employees. Relevant contract clauses and other rules and regulations read as follows:

ARTICLE 28 (National Agreement) Employer Claims

The parties agree that continued public confidence in the Postal Service requires the proper care and handling of the USàPS property, postal funds and the mails. In advance of any money demand upon an employee for any reason, the employee must be informed in writing and the demand must include the reasons therefor.

Section 4 - Collection Procedure

A. if the employee grieves a demand in the amount of more than \$200.00 which is made pursuant to Section 1,2 or 3, the Employer agrees to delay collection of the monies demanded until disposition of the grievance had been had either by settlement with the Union or through the grievance-arbitration procedure.

B. Any amount due the Employer may be collected through payroll deductions not to exceed 20% of the employee's bi-weekly gross pay unless the Employer and the employee agree to another method of payment.

Employee and Labor Relations Manual Section 462.3 Applicable Collection Procedures

In seeking to collect a debt from a collective-bargaining unit employee, the Postal service must follow the procedural requirements governing the collection of employer claims specified by the applicable collective bargaining agreement. Care must be taken to ensure that any demand letter served on an employee provides notice of any right an employee might have to challenge the demand under the applicable collective-bargaining agreement.

F-1 HANDBOOK Section 113 - Demands for Payment of Losses and Deficiencies

All employees must receive written notice of any money demand for any reason. The letter of demand must be signed by the postmaster or his or her designee, must notify the employee of a USPS determination of the existence, nature and amount of the debt. In addition, it must specify the options available to the employee to repay the debt or to appeal the USPS determination of the debt or the proposed method of repayment..... regulations governing the collection of debts from bargaining unit employees are in ELM 460 and the applicable collective bargaining agreement.

Section 473.1 - Bargaining Unit Employees .11

When in accordance with the conditions and standards set forth in Article 28 of the employee's respective collective bargaining agreement and Employee and Labor Relations Manual (ELM) 460, it is determined that a bargaining unit employee is financially liable to the Postal Service, any demand for payment must be in writing and signed by the postmaster or his or her designee. In addition to notifying the employee of a USPS determination of the existence, nature and amount of the debt, the demand letter requesting payment must contain the following statement regarding the employee's right to challenge the USPS claim: "Bargaining employees' appeal procedures are contained in Article 15 of the applicable collective bargaining agreement."

The included sections of various manuals and the National Agreement set forth the requirements about the issuance and the contents of a Letter of Demand. Most of these are administrative requirements unilaterally established by the Postal Service. As such they are incorporated by reference in Article 19 of the National Agreement. Failure to adhere to these requirements may well bring about a cancellation and a rescinding of the Letter of Demand. The issue here is whether the Letter of Demand met the administrative requirements or was it procedurally defective in not setting forth the grievant's rights in agreement with the manuals covering this subject.

The Union has presented several arbitration awards for this arbitrator's review. In each of these awards, the arbitrators comment and discuss similar situations where the Postal Service or the postmaster in issuing a Letter of Demand did not adhere to the procedural requirements. Many of these decisions reaffirm Arbitrator Howard's (37C-2B-C 15779) opinion which states:

"It is abundantly clear that a Letter of Demand issued

to the grievant was procedurally defective in failing to comport with the instructions contained in the F-1 Handbook and the Employee and Labor relations Manual. The instructions require that the Letter of Demand specify the options available for repayment and provide notice of the rights on the part of the employee to challenge the demand as cited supra.

Arbitrator Dunn (S4C-3D-C 64951 and 9918) cites other arbitration decisions and upholds the proposition that if Management does not specify the options available to the grievant, the Letter of Demand is procedurally defective. Other arbitrators have held that if we are to hold the employees to a standard of conduct in the handling of postal service funds, then the postal service must bear a like responsibility in meeting their own administrative requirements. Mutuality requires both parties to abide by Postal rules and regulations. Management suggests that its failure to include the appeal rights is simply an unimportant technicality and should not be used as a defense to a binding legal obligation.

Article 28 creates obligations, conditions, and a standard of conduct which includes responsibilities and accountabilities which are enforceable. To be enforced strict compliance with its dictates is necessary. No circumstances are set forth which permits compliance with the aforementioned F-1 Handbook and the sections of the ELM. The issuance of a Letter of Demand requires strict compliance with all the procedural requirements. Procedural compliance has not been met in this case. The proliferation of like cases throughout the Postal Service would lead to the conclusion that there has been a general disregard of

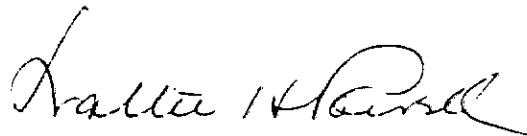
general disregard of compliance by managers with the administrative directives of the Postal Service. Hopefully in the issuance of future manuals, the requirements, the rules and the regulations concerning Letters of Demand will be simply set forth in a single release so that the procedural requirements can be met.

The facts presented in the instant case are not in dispute. There has not been compliance with the procedural requirements for the issuance of a Letter of Demand. Based on these findings the Letter of Demand must be rescinded and the grievance granted.

AWARD

GRIEVANCE IS GRANTED. THE REMEDY IS THAT THE LETTER OF DEMAND ISSUED TO L. LUCAS BE RESCINDED AND DECLARED NULL AND VOID.

NOVEMBER 23, 1990



WALTER H. POWELL, Arbitrator