

C# 11170

REGIONAL ARBITRATION PANEL

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

GRIEVANCE: J. Sullivan

POST OFFICE: Woburn, MA

CASE NO: N7C-1E-C 24418

BEFORE: Arnold M. Zack, Arbitrator

APPEARANCES:

For the US Postal Service: James Smyrnios

For the Union: Wayne Corriveau

Place of Hearing: Woburn, MA

Date of Hearing: May 10, 1990

AWARD:

The Postal Service did violate the parties' agreement by not granting administrative leave to John Sullivan on May 15, 18, 22, 25 and June 1, 1989. He shall be made whole for earnings lost.

Date of Award: June 1, 1990

Arnold M. Zack
Arnold M. Zack

UNITED STATES POSTAL SERVICE
WOBURN, MA
AND
AMERICAN POSTAL WORKERS
UNION

ARBITRATION OPINION & DECISION
CASE NO. N7C-1E-C 24418
J. SULLIVAN GRIEVANCE
DATE OF DECISION: 6/1/90
ARNOLD M. ZACK, ARBITRATOR

On May 10, 1990 I held a hearing in Woburn, MA to arbitrate the following dispute. Wayne Coniveau represented the Union. James Smyrnios represented the Postal Service.

THE ISSUE

The parties agreed upon the issue to be decided as follows:

"Did the Postal Service violate the parties' agreement by not granting administrative leave on May 15, 18, 22, 25 and June 1, 1989 to grievant John C. Sullivan, Jr.? What shall be the remedy, if any?

THE FACTS

On May 2, 1989 the Town Clerk of the Town of Wakefield announced that the Annual Town Meeting would be held at 7:30 pm on the evenings of May 15, 18, 22 and 25, 1989. John Sullivan, the grievant, is a full time regular clerk whose tour begins at 4 pm. He is a Town Officer and Library Trustee. On May 17, 1989 he submitted forms 3971 requesting administrative leave for the dates in question and for June 1, 1989 to which the annual meeting was extended. The requests were denied and the grievant requested the time off on LWOP under protest while processing the present grievance. The case was not resolved and the matter was thereafter appealed to arbitration. At the arbitration hearing the parties submitted certain exhibits without objection. The hearing was declared closed. The Union representative argued its position orally, while the Postal Service representative requested seven days in which to file a brief.

When that brief was received it had appended to it a 1984 Step 4 settlement agreement between the Postal Service and the Mail Handlers Union. The submission of that settlement agreement without the prior agreement of the Union after the hearing was closed and the Union had argued its position was tardy and improper. The settlement agreement and the arguments in the brief relating thereto are not properly before me and are not being considered in this opinion and decision.

CONTENTIONS OF THE UNION

The Union contends that the grievant has been given administrative leave to attend to his voting responsibilities in the past, that he was entitled and required to be present to vote on some 62 articles in the Town's warrant, that he submitted the requisite request for administrative leave some three weeks in advance, and that the action of the Postal Service in denying his request for administrative leave was improper. It cites Sections 519.241 of the ELM and the November 6, 1986 award of Arbitrator Holden in the T. Rezendes case (N4M-1E-C 5209) as supporting its position. It urges the grievance be sustained.

CONTENTIONS OF THE POSTAL SERVICE

The Postal Service asserts that a request for administrative voting leave for five hours per day on five days over an 18-day period is unreasonable, that there was no documentation to prove his attendance at any Town Meeting, the length of his stay or the duration of the meetings, and that Section 519 does not grant administrative voting leave for Town Meetings. It urges the grievance be denied.

DISCUSSION

As noted earlier, the time for the presentation of evidence is during the hearing itself where there is opportunity for examination and cross examination of witnesses and opportunity to challenge and rebut exhibits and testimony. Evidence presented after the close of the hearing

such as the 1984 fourth step settlement cannot be considered since it cannot be subject to challenge as to admissibility, or subject to refutation or rebuttal once the hearing is closed. Similarly, post hearing arguments that the Union failed to prove the grievant's attendance at the Town Meeting, the length of his stays or the duration of the meetings, are tardy when the Union has no opportunity to respond or answer thereto. The parties submitted substantial documentation at the hearing. No witnesses were called by either party. The evidence as to the hours of administrative leave requested was presented without challenge by the Postal Service and the Union had every right to assume that there was no dispute as to the hours claimed. If the Postal Service felt the claim of time excessive or requiring substantiation, the grievance steps and at the very least, the arbitration hearing was the time and place to do so. The hearing was closed and the Union made its closing statement on the reasonable assumption that there was no dispute over the grievant's attendance or duration of the meetings. It is violative of the rules of the hearing forum as the opportunity for presentation of evidence and challenges thereto for the Postal Service to remain silent in the hearing on the issue of hours actually spent at the hearing, lead the the Union to believe there is no dispute thereon, and then in a post hearing brief challenge the failure of the Union to "prove" the hours, when the hearing is closed the opportunity for so doing has passed.

The evidence in this case shows that Sullivan made timely request for administrative leave to attend the Town meeting on the dates cited. Although he was also a Library Trustee and a member of the Arts Lottery Council, his attendance at the Town Meeting was for the purpose of voting as a Town Meeting member.

The right of Postal employees for time off to vote is established by Section 519.241 of the ELMR.

"Employees are encouraged to exercise their voting rights so far as is practicable, without seriously interfering with Postal Service employees in the Postal Service ... who deserve to vote ... in any election or in any referendum on a civic matter in their community are excused for a reasonable time for that purpose on the day they are scheduled to work ..."

The issue of whether that provision extends to Town Meetings has been resolved by the decision of Arbitrator Holden in N4M-1E-C 5209, the only decision on the issue which was entered into evidence in this proceeding. The 1984 fourth step agreement which I exclude from my consideration involved the same grievant in the same location as the Holden award. The Holden award rendered two years later is the only relevant precedent and is dispositive of this case.

As Holden held

"No persuasive grounds exist for adopting the view that voting at Town Meeting should be excluded from the general encouragement given to voting under Section 519.241.

"This was not a situation ... whereby the grievant could cast a vote outside the hours of the Town Meeting; it is necessary to be present at a Town Meeting in order to vote upon matters which are taken up at such meeting.

"In sum, then, a request to participate in an annual ... town meeting falls within the ambit of Section 519.241. ... In the future such requests must be treated as one which falls within the scope of this Section of the E & LRM."

As noted in its brief in the present case:

"The Postal Service did not take the position that the grievant's absence seriously interfered with its function."

Accordingly I find the grievance has merit and is sustained.

DECISION

The Postal Service did violate the parties' agreement by not granting administrative leave to John Sullivan on May 15, 18, 22, 25 and June 1, 1989. He shall be made whole for earnings lost.

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