



STEP B DECISION

Step B Team:	Decision: RESOLVE
USPS: Jennifer Lewis	USPS Number: G11N-4G-1326 7908
NALC: Mark L. Malone	Grievant: Joe Blancarte
	Branch Grievance Number: 421-562-13
	NALC Branch #: 421
District:	Installation: San Antonio
Rio Grande	Delivery Unit: Laurel Heights 48-7964
	State: Texas
Step A Reps:	Incident date: 06/15/2013
USPS: E Jaramillo	Date Informal Step A: 06/29/2013
NALC: J Portales	Formal Step A Meeting Date: 07/16/2013
	Date Received at Step B: 07/25/2013 (Aus 07/26/2013)
	Step B Decision Date: 08/08/2013
	Issue Code: 17.3000
	NALC subject code: 100053
	Original Step B Received Date: 07/25/2013
	Date Sent to Assisting Team: 07/25/2013

ISSUE: Did management violate Articles 15, 17 and 19 of the National Agreement when management violated Mr. Blancarte's Weingarten Rights? If so, what is the appropriate remedy?

DECISION: The dispute resolution team mutually agreed to resolve this dispute. Management violated the grievant's Weingarten Rights by their refusal to allow his representative to actively participate in the interview process. Management will comply with the requirements detailed in Article 17 regarding individual's Weingarten Rights.

EXPLANATION:

The union contends management violated Articles 15, 17 and 19 during an investigative interview with Mr. Blancarte. During the investigative interview Mr. Blancarte and the steward were taken into the office with supervisors Rodriguez and Ramirez. Mr. Rodriguez was the gentleman conducting the investigation; Mr. Ramirez was just a witness. During the interview Mr. Blancarte was asked questions regarding an incident between him and another carrier the day before. After Mr. Blancarte answered the questions, the steward asked if the other carrier felt threatened by the incident and Mr. Rodriguez said that he did not know. The steward asked if any other investigations were done that day since he had seen Mr. Pena questioning the other carrier as well as other carriers. Mr. Rodriguez said he did not know. Mr. Blancarte stated Mr. Rodriguez could go ask real fast; Mr. Rodriguez said he did not have the time. The steward tried asking a few questions and Mr. Rodriguez said that there was not time. Mr. Blancarte stated that by not letting the steward speak or ask questions they were violating his Weingarten Rights. Mr. Rodriguez said there was no time and that that was it. Mr. Blancarte stated his Weingarten Rights were violated. At that point the investigative interview was over. During the informal meeting the supervisor Ramirez stated that the meeting was just for instructions, at no time during the investigative

interview did either supervisor inform Mr. Blancarte that it was not an investigative interview. Mr. Rodriguez was not writing down the questions asked by Mr. Blancarte, he was writing down Mr. Blancarte's answers to the questions he was asked. When management did not allow the steward to speak or to ask questions they restricted his role to a silent presence. As remedy the union requests management 'cease and desist' violating the Weingarten Rights and ending investigative interview before the union steward gets a chance to ask all the questions that he/she may have.

Management contends that ultimately this is an issue of the union and management not agreeing on exactly what was said and what took place on June 15, 2013 between Mr. Blancarte, Mr. Portales, Mr. Ramirez and Mr. Rodriguez. The union contends that management called the meeting an investigative interview and management contends they only were giving an instruction. When asked if discipline was issued the steward responded 'no, just an instruction was given on this date'. Weingarten Rule gives employees the right to representation during an investigatory interview which he or she reasonably believes may lead to discipline. In this case, the supervisors state that they never called this meeting a pre-disciplinary interview or an investigative interview. Management simply wanted to give Mr. Blancarte an instruction. Both sides have their own story as to what transpired. No discipline was issued, this grievance should be withdrawn. No one was harmed in any way. Furthermore, neither supervisor has previously violated Mr. Blancarte's Weingarten Rights. Since there is no history of a violation, there is no reason or evidence to logically conclude this would be the first violation. Weingarten Rights were not violated, management simply gave an instruction. Mr. Blancarte was asked if he pointed to a carrier and if so to stop pointing at carriers. That was all the meeting was about. This grievance should be denied as the union did not prove that an investigative interview or pre-disciplinary interview was conducted. The fact that discipline was not issued is further proof of the latter statement. Management contends that all statements should be provided during the informal A process and at the very least at the Formal A meeting. Mr. Portales provided a statement along with his additions and corrections that precedes both the informal and formal meetings. Management contends that the statement could have and should have been provided during the informal and formal meetings. As a result the statement from Mr. Blancarte should not be considered in any way, shape or form regarding this grievance. This grievance is procedurally defective and should be denied.

Step B discussion

Management's position is that Mr. Blancarte was being called into the office to be given an instruction. Weingarten Rights allowed an employee to representation when the employee reasonably believes the investigative interview may lead to disciplinary action.

In determining whether or not there was a violation of the employee's Weingarten Rights, the context of the meeting was reviewed. Management's position paper contains statements from both supervisors.

Mr. Rodriguez states he initiated the meeting by telling Mr. Blancarte he needed to see him in the office. According to Mr. Rodriguez when Mr. Blancarte asked if it could lead to discipline and stated if so that he wanted a steward, Mr. Rodriguez requested permission to allow the steward. Mr. Rodriguez then states once in the office he began to question Mr. Blancarte if he had been involved in a shouting match and had he pointed his finger at another carrier. After Mr. Blancarte responded to the questions Mr. Rodriguez states he had to give him instruction to not be pointing his finger at anyone. Mr. Blancarte asked if I remember what he had said; I stated no, I was busy. Mr. Blancarte asked another question and stated that he wanted to know. At that time, I told Mr. Blancarte that he had his instructions; I had to go to the street.

Mr. Ramirez states that once in the office Mr. Rodriguez stated that he was going to give Mr. Blancarte an instruction to not be pointing at carriers. Mr. Rodriguez was writing down the instructions to make sure he covered everything. At that point, Mr. Blancarte and Mr. Portales changed the subject and started asking questions trying to find out who claimed the harassment against Mr. Blancarte. After Mr. Blancarte and Mr. Portales kept asking questions, Mr. Rodriguez ended the conversation and stated, you have my instructions, I have to hit the street. Mr. Rodriguez then walked out.

The supervisors' statements differ slightly in regards as to how the meeting started and what may have occurred during the meeting. Mr. Rodriguez states once in the office he started asking Mr. Blancarte questions. Mr. Ramirez states once in the office Mr. Rodriguez stated he was going to give Mr. Blancarte an instruction. While the case file does contain a separate statement from Mr. Ramirez, the statements written as part of management's Formal Step A position do not expressly state that Mr. Blancarte and Mr. Portales were told the meeting was not an investigative interview.

Management's position paper also contains a statement from Mr. Portales, the steward.

According to management Mr. Portales stated that once in the office Mr. Rodriguez stated that it was an investigative interview. He, Mr. Rodriguez, stated the meeting was about the shouting match between Mr. Blancarte and Mr. Hughes. Mr. Rodriguez asked Mr. Blancarte questions which Mr. Blancarte responded to. Mr. Blancarte then asked Mr. Rodriguez if he remember what he had asked him; Mr. Rodriguez responded no that he was busy. Mr. Blancarte asked Mr. Rodriguez to write down that he did not remember. Mr. Blancarte asked another question which Mr. Rodriguez stated that he did not know. Mr. Rodriguez then gave Mr. Blancarte the instruction to not point at anyone anymore. I, Mr. Portales, asked Mr. Rodriguez if the other carrier felt threatened, Mr. Rodriguez did not respond. When Mr. Blancarte asked if Mr. Rodriguez could find out if anyone else was interviewed, Mr. Rodriguez said no, not right now. Mr. Rodriguez ended the meeting saying this is all the questions he had; he had to go to the street.

When Mr. Portales was asked why he thought the meeting was a pre-disciplinary interview he responded because Mr. Rodriguez stated that it was. Mr. Portales agreed no discipline had been issued but stated there was a violation by not allowing the steward to ask questions and by terminating the interview.

The case file also contains a statement by Mr. Blancarte. Management contends that all statements should be provided during the Informal A process and no later than the Formal A meeting. The parties do not agree that Mr. Portales informed management during the formal meeting that he did not have a copy of Mr. Blancarte's statement and that it would be included in the file. The statement was included with the union's additions and corrections. As such management contends that the statement should not be considered in any way, shape or form. Management states the grievance is procedurally defective and should be denied.

Article 15.2 Informal Step A (a) states (in part): *During the meeting the parties are encouraged to jointly review all relevant documents to facilitate resolution of the dispute.*

The JCAM, pages 15-3/4, state in part: *The steward appeals a grievance to Formal Step A by filling out the Informal Step A portion of the NALC-USPS Joint Step A Grievance Form (Form PS 8190) and sending it to the installation head or designee along with all supporting documentation available at the time.*

Article 15.2 Formal Step A (d) states (in part): *At the meeting the Union representative shall make a full and detailed statement of facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon.*

Article 15.2 Formal Step A (g) Additions and corrections to the Formal Step A record may be submitted by the Union with the Step B appeal letter within the time frame for initiating the Step B appeal with a copy to the management Formal Step A official. Any such statement must be included in the file as part of the grievance record in the case.

Additions and Corrections. The union may submit written additions and corrections to the Formal Step A record with the Step B appeal within the time limit for filing an appeal to Step B. The filing of any corrections or additions does not extend the time limits for filing the appeal to Step B. At the same time, a copy of the additions and corrections must be sent to the management Formal Step A official. Management may respond by sending additional information to the Step B team which is directly related to the union's additions and corrections provided that it is received prior to the Step B decision. At the same time, a copy must be sent to the union Formal Step A representative. Any statement of additions and corrections must be included in the file as part of the grievance record in the case. A steward is entitled to time on-the-clock to write the Union's statement of corrections and additions (See Step 4 Settlement A8-S-0309, December 7, 1979, M-01145).

While it is mutually agreed that both parties should exchange as much documentation as they have available at the informal and formal meetings, there are no known prohibition to the content of the union's additions and corrections. Additions and corrections are not intended to be used to introduce new argument or additional allegations of contractual violations.

Mr. Blancarte's statement addresses the incident which leads to the meeting and the content of that meeting. The statement does not introduce any argument which was not presented at the informal and/or formal meetings. Management was provided a copy of the statement and afforded the opportunity to respond; that response was included with the case file received at Step B. The inclusion of a statement by Mr. Blancarte in the union's additions and corrections does not render this grievance procedurally defective.

Management at Formal Step A contends that the employee's Weingarten Rights were not violated in that the supervisors did not refer to the meeting as an investigative interview and that no discipline was issued. Weingarten does not require the employer to specifically state that an investigative interview is being conducted. Investigations are a critical component in the process to determine whether or not disciplinary action is warranted. That no disciplinary action resulted from the meeting is not conclusive that the meeting was not or could not be characterized as an investigative interview. Investigative interviews are not the result of a determination to issue discipline. Discipline is the result of an investigation which concludes in the determination that corrective action is warranted.

When the intent of a meeting is solely to provide the employee with instructions the employee does not have the right to invoke their Weingarten Rights. If the supervisor's intent was only to issue the employee instructions why was there any question about allowing the steward to join the meeting and why did the supervisor need permission to

allow the employee representation after informing him that it could lead to discipline if he failed to follow the instruction?

If the supervisor's intent was solely to issue the employee an instruction, this issue could have been avoided by informing the employee that the meeting would not result in disciplinary action and by convening the meeting with only Mr. Rodriguez and Mr. Blancarte.

Mr. Rodriguez initiated the meeting by informing Mr. Blancarte that he was needed in the office to be issued an instruction. Given this statement it would be reasonable to conclude that it had already been determined that there was a 'need' to issue the instruction. Mr. Rodriguez then states he began the meeting by questioning Mr. Blancarte about a shouting match and about his pointing a finger at another carrier. By Mr. Rodriguez's account the employee was questioned regarding his behavior and an incident which occurred at work on the previous day. Given Mr. Rodriguez's account of the meeting and how he started that meeting it is reasonable to conclude that the meeting was not intended for the sole purpose of issuing the employee an instruction.

The nature of the questions involved potential allegations regarding the employee's behavior at work. Management was not stating facts as they knew them; management was searching for facts and potentially trying to determine the employee's part in the previous day's incident. The nature of the questions asked by the supervisor could reasonable lead the employee to believe that the meeting could result in disciplinary action. Once Mr. Rodriguez initiated the questioning the 'intent' of the meeting as depicted by management changed.

The employee had already requested representation which management determined to be appropriate to provide, and then the nature of the questions presented during that meeting could reasonably be construed to constitute an investigative interview. **In a Weingarten interview the employee has the right to a steward's assistance—not just a silent presence. The employer would violate the employee's Weingarten rights if it refused to allow the representative to speak or tried to restrict the steward to the role of a passive observer. When Mr. Rodriguez refused to answer the steward's questions, Mr. Rodriguez denied the employee his rights to representation and in doing so violated the grievant's Weingarten Rights.**



Jennifer Lewis
USPS Step B Representative



Mark L. Malone
NALC Step B Representative

cc: Manager, SW Area Labor Relations
Manager, Rio Grande District
Kathy Baldwin, NALC NBA, Region 10
Postmaster, San Antonio, Texas
Manager, Human Resources, Rio Grande District
Manager, Labor Relations, Rio Grande District
Management Formal Step A Designee
NALC Branch President
NALC Formal Step A Designee
DRT File

Grievance file content:

PS Form 8190

Union's position (3 pages)

Statement R Ramirez

Informal notes – union

Employee everything report

Extension agreement

Informal Step A form (3 pages)

Request for formal meeting

Additions and corrections – union

Statement J Blancarte

Management's position (3 pages)

Union's position (3 pages)

JCAM pages 17-6/7/8 (in part)

Informal notes – union

Request for formal meeting

Informal statement – management

Statement R Ramirez

Employee everything report

PS Form 8190

Additions and corrections - management