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National Business Agent
N.A.L.C.
Region #10

REGULAR ARBITRATION PANEL

IN the Matter of the Arbitration) GRIEVANT: A. McCoy
Between the) POST OFFICE: Galveston Texas
UNITED STATES POSTAL SERVICE) CASE No.: G16N-4G-C 19190683
and) UNION: 19-CJW
NATIONAL ASSOCIATION OF LETTER CARRIERS) DRT No.: 10-464283

BEFORE: DONALD J. BARRETT, ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Mr. Gilbert Miranda, LR Specialist
For the Union: Mr. Javier Bernal, National Business Agent, Region 10
Place of Hearing: Galveston Texas

Date of Hearing: August 27, 2019¹


AWARD: This grievance is sustained.

Date of Award: October 2, 2019

Award Summary

The Union provided clear and convincing evidence that Management violated Article 17.3 of the Agreement by failing to produce/and or provide information requested by the Union for the processing of a grievance related to the discipline issued to the grievant.

The failure also denied the grievant, and Union their due process rights to obtain all information that may have been relied upon to make such a decision to issue discipline by the postmaster.



Arbitrator

¹ Post-Hearing Briefs were received Sept. 13, 2019

STATEMENT OF PROCEEDINGS:

The matter being discussed throughout this document was brought to an arbitration hearing on August 27, 2019 at the Postal Facility located at 601 25th Street, Galveston Texas pursuant to the applicable provisions of the 2016-2019 National Agreement (Agreement or Contract) between the National Association of Letter Carriers (Union) and the U.S. Postal Service (Service or Management).

As a current member of the parties Regular Arbitration Panel I was selected to hear this grievance at hearing, and did afford the parties a full, fair, and objective opportunity to be heard, to present argument, evidence and witnesses on behalf of their position(s)

In the second seat for the Union was Ms. Dietra Young, Local Business Agent¹

The parties expressed their intention to present witnesses on their behalf and asked that each witness be duly sworn an oath prior to being examined. Their request was honored.

The Union called the following witnesses:

Mr. Anthony McCoy, City Letter Carrier (Grievant)

¹ Ms. Young began in the first seat but was challenged by the Service counsel. When this challenge could not be resolved after numerous attempts were made to reach the Area Manager, Labor Relations, the Union requested to change seats with NBA Bernal than assuming the first seat. This request was granted. The Service advocate then requested Ms. Young not be allowed to attend this hearing as a participant. That request was denied as the person occupying the second seat is not a participant and only serves the counsel.

3.

Ms. Rhonda James, Union Steward

The Service called the following witness:

Ms. Kimberly Chandler, Officer in Charge (October, 2018)

Counsel for both parties provided oral OPENING STATEMENTS. The parties did request the opportunity to provide CLOSING STATEMENTS through a Post-Hearing Brief. It was agreed that each must be postmarked no later than September 10, 2019. Both were timely submitted and received by this arbitrator. I thank counsel for their efforts in providing me their presentations, and citations. Please know that I have read each one for their relevance to the matter before me.

JOINT EXHIBITS:

Joint 1, The National Agreement, including the Joint Contract Administration Manual (J-CAM)

Joint 2, Moving Papers, Pages 1-4 (Step B), Pages 1-24

J-3, A. McCoy Step B (The subject of this hearing)

STIPULATED FACTS NOT IN DISPUTE:

None were offered at hearing

ISSUE TO BE DECIDED:

"Did management violate Article 17 of the National Agreement by failing to provide requested documentation from the interview held on March 11, 2019? If so, what should the remedy be?"²

BACKGROUND:

A Pre-Disciplinary Interview (PDI) was held between Ms. Chandler, Mr. McCoy, and Ms. James was present as the grievant's representative.

The grievant was asked a series of questions related to the alleged cause for this meeting by Ms. Chandler and also appeared to be taking notes.

The Service claims Ms. Chandler had only one sheet of paper with dates and times listed which she used to refer to during this interview.

The Union requested a copy of all Management documentation from this meeting, and argues it was not provided, while Management argues that through the Union's Request for Information dated March 21, 2019 the information requested was provided the Union.

Management claims no request was made at the PDI, or it would have been provided, and that the OIC had only one piece of paper, while the Union claims there was a second paper they were entitled to receive pursuant to Article 17 of the Agreement.

² See Step B Team Issue, J-3, Page One

RELEVANT CONTRACTUAL PROVISIONS:

Article 17, Representation

Section 2.B "At an installation, the Union may designate in writing to the employer one Union representative actively employed at that installation to act as a steward to investigate, present and adjust a specific grievance or to investigate a specific problem to determine whether to file a grievance."

Section 3. Rights of Stewards

"The steward...may request and shall obtain access through the appropriate supervisor to review the documents, files and other records necessary for processing a grievance or determining if a grievance exists and shall have the right to interview the aggrieved employee(s), supervisors and witnesses during working hours. Such requests shall not be unreasonably denied."³

POSITION OF THE PARTIES IN THIS MATTER:

The Union:

The Union maintains that Management has violated Article 17 rights of the Union/Steward by refusing to allow Steward James to see the documents being held by OIC Chandler at the PDI.

³ See Article 17, Agreement, Pages 81-82 for full text.

6.

The Union further maintains that during this interview held on March 11, 2019 the OIC held two pieces of paper and when the steward reached out to see what was on these papers the OIC refused to allow the steward, or grievant to view such.

That during questioning at hearing the OIC stated the Union's request for information was related only to documentation, and not her notes, which she stated she does not know where such notes are at this time.

The Union argues that this failure to provide the Union all the information requested denies the Union, and the grievant their due process rights. That the result of this March 11th interview was the issuance of a suspension to the grievant.

The Union asks that this grievance be sustained in its entirety, that an cease and desist order be issued instructing Management to provide information requested in the future be provided, the resultant Letter of Warning (Issued suspension was reduced to a LOW) be expunged from all records and files, and any other remedy deemed appropriate by the Arbitrator.

The Service:

The Service maintains that the Union has failed to meet their burden to prove a violation of Article 17 of the Agreement.

That the grievant was duly represented during the March 11th PDI, and both the OIC and Steward wrote the same set of notes/questions/responses.

That other than the OIC's notes, all information requested by the Union was provided from their Request for Information, and that this was done timely.

The Service requests this grievance be denied in its entirety.

FINDINGS & OPINION OF THIS ARBITRATOR:

The world thrives on information to the point many become overloaded by it. Twenty four hour news cycles, newspapers and books. Congress wants information. Reporters want information. Information saturates our television with infomercials, commercials, and news reports.

The character "Newman" from the old Seinfeld TV show was once asked why his Postal job was so important, and he stated, "....because when you control the mail, you control information."

T.S. Eliot once said, "Where is the knowledge we have lost in information?"⁴

I may be embellishing somewhat but these characterizations demonstrate the power of information, and why it matters so much.

The Union's right to information which they alone deem necessary for the consideration of filing of a grievance, or through the pursuit of a grievance has been confirmed throughout labor history by the courts, and arbitral precedent.

⁴ Thomas Sterns Eliot, 1888-1965

A Union's right to information they have appropriately requested through the parties National Agreement related to the grievance process is tantamount to a sacred sacrament in the Labor-Management relationship, and is vigorously protected.

In the instant matter before me, as Counsel for the Union argues this is indeed, a simple case.

The Union claims a document held by Postmaster Chandler during an Investigative Interview (II) with the grievant, and Union Steward James on March 11, 2019 was requested during the interview by Steward James⁵ and in an Informal Step A "Request for Documentation" (RFI) dated March 21, 2019.⁶

The postmaster responded that she could not recall being asked for documentation during this interview, and further, she had no documentation, only a "sheet of paper with dates and times written on it."⁷

Management also stated that based on the March 21st RFI, all information was provided to the Union on March 25, 2019.⁸

However (readers always fear a "However"), during the postmaster's hearing testimony, she offered that Steward James did ask for documentation, but never asked for her notes, therefore she did not provide such – that "notes" are not documentation.

⁵ See J-2, Pages 3-5 & 9 -11

⁶ See J-2, Page 21

⁷ See J-2, Page 6

⁸ See J-3, Page 3 & 4

She also stated that she has “no idea” where such “notes” are at this time.⁹

First, I find it baffling that a high level Postal official with years of service, and interactions with Union’s, and the grievance process believes that “notes” do not constitute information when being requested under the circumstances of this matter. Those notes may provide the catalyst for her decision making process when considering discipline, as it did in this case.

Notes taken in the setting of March 11, 2019, in clear view of the employee and Union representative cannot in any way be classified as personal notes or exempt from review by the Union. It matters not whether there was one, two or more sheets of paper in hand, just as Management could seek a copy of the steward’s notes taken during this investigative interview, so too does the Union have the right to seek theirs.

The postmaster’s own offerings that she used the paper(s) to record the grievant’s responses to her questions made that/those paper(s) an integral part of a grievance investigation, if the Union so chooses.

As a result of that March 11th interview, the grievant was issued discipline. That fact alone makes such notes *evidence* in any proceeding(s) that may take place as a result of such discipline.

Failing to provide such evidence when requested, and further, failing to maintain possession of such evidence when a grievance has been filed that may be directly related to those notes taken during the II is a denial of the grievant’s (And Union’s) due process rights.

⁹ Hearing testimony

10.

I need not comment on the undisputed offerings that this same issue is familiar to the same parties before me. Suffice to say that this event alone warrants attention and reflection to insure that such rights are no longer violated.

As stated earlier, the overwhelming precedent favoring the Union's right to information (and notes) is clear, and dearly held by such Union's.

Arbitrators have long held that the Employer must divulge "all available material facts" to facilitate openness and settlement of grievances.¹⁰

Most arbitrator's, as does this one, agree that Union's should have that information necessary for the processing of grievances. Another arbitrator previously stated that "the object and purpose of arbitration is to arrive at a fair and just decision, and to this end parties should be assisted in obtaining competent and material evidence where such may reasonably be had."¹¹

While one may argue that all relevant information has been provided to the Union, and therefore there is no violation, it is the right of the Union to decide if additional information is needed to undertake their responsibilities, and not Management.

To make such a determination by Management on behalf of the Union is to violate the very intent of Article 17.3 of the Agreement, and place Management in an untenable position.

¹⁰ See Safeway Stores, 89 LA 627 (Staudohar- 1987), Cannelton Industries, 91 LA 744 (Volz-1988), Regional Transp. Dist., 87 LA 630 (Feldman – 1986)

¹¹ See Chesapeake & Potomac Telephone Co. of West Virginia, 21 LA 367

11.

To discard, lose or destroy the very information being sought by the Union only casts suspicion far and wide.

The Service's counsel also exclaims that this is a simple case, and I agree with both learned counsel, however I suspect for different reasons.

Information was requested that the Union had such right's to obtain, and it was not provided. That's simple enough. Yet by this failure to provide such it denied the Union the information that they deemed important to defend the grievant. The postmaster's note(s) may have contained nothing revealing, incriminating, or distorted, or may have been, as she stated similar/same as those notes taken by the Union steward.

However, the Union (and arbitrator) will not learn the accurate contents of such notes because they were not provided, and cannot now be accounted for.

For the reasons set forth above, I find in favor of the Union.

AWARD:

This grievance is sustained in its entirety. The resultant Letter of Warning issued to the grievant shall be immediately rescinded, and removed from all records. Management is ordered to cease and desist from further violations of Article 17 of the Agreement.

Management shall award the Union the sum of Two Hundred and Fifty Dollars (250.00) compensation toward the processing of this grievance.

Nothing follows this October 2, 2019 @ Manatee County Florida by DjB