

REGULAR ARBITRATION PANEL

In the Matter of Arbitration between : GRIEVANT: CLASS ACTION
APWU : GRIEVANCE NO.: [REDACTED]
And : POST OFFICE: [REDACTED]
UNITED STATES POSTAL SERVICE : CASE NO.: [REDACTED]

BEFORE: [REDACTED], Impartial Arbitrator

APPEARANCE: For the Union: [REDACTED],
National Business Agent
For the United States
Postal Service: [REDACTED]
Labor Relations Specialist

PLACE OF HEARING: [REDACTED]

DATE OF HEARING: [REDACTED]

AWARD: The grievance is found to be filed timely, this grievance is arbitrable and should move forward on the merits.

BACKGROUND

Before we could begin the hearing, the arbitrator was informed that there was a threshold issue involving the arbitrability of the case that required the case to be bifurcated. Parties each had an opportunity to present their arguments at the hearing and agreed to brief their closing arguments, due to the arbitrator by June 9, 2023. Both parties submitted timely briefs, upon which the arbitrator closed the hearing on the arbitrability of this grievance.

ISSUE

Was grievance [REDACTED] timely filed by the Union in compliance with Article 15 of the Collective Bargaining Agreement? Is this grievance arbitrable?

RELEVANT CONTRACT LANGUAGE

Article 15 – Grievance and Arbitration Procedure

Section 2. Grievance Procedure Steps

Step 1:

- (a) Any employee who feels aggrieved must discuss the grievance with the employee's immediate supervisor within fourteen (14) days of the date on which the employee or the Union first learned or may reasonably have been expected to have learned of its cause. The employee, if he or she so desires, may be accompanied and represented by the employee's steward or a Union representative. The Union also may initiate a grievance at Step 1 within fourteen (14) days of the date the Union first became aware of (or reasonably should have become aware of) the facts giving rise to the grievance. In such case the participation of an individual grievant is not required. A Step 1 Union grievance may involve a complaint affecting more than one employee in the office. When the Union files a class action grievance, Management will designate the appropriate employer representative responsible for handling such complaint.
- (b) In any such discussion the supervisor shall have authority to settle the grievance. The steward or other Union representative likewise shall have authority to settle or withdraw the grievance in whole or in part. No resolution reached as a result of such discussion shall be a precedent for any purpose.
- (c) If no resolution is reached as a result of such discussion, the supervisor shall render a decision orally stating the reasons for the decision. The supervisor's decision should be stated during the discussion, if possible, but in no event shall it be given to the Union representative (or grievant, if no Union representative was requested) later than five (5) days thereafter unless the parties agree to extend the five (5) day period. Within five (5) days after the supervisor's decision, the supervisor shall, at the request of the Union representative, initial the standard grievance form that is used at Step 2 confirming the date upon which the decision was rendered.
- (d) The Union shall be entitled to appeal an adverse decision to Step 2 of the grievance procedure within ten (10) days after receipt of the supervisor's decision. Such appeal shall be made by completing a standard grievance form developed by agreement of the parties, which shall include appropriate space for at least the following:
 - 1. detailed statement of facts;
 - 2. contentions of the grievant;
 - 3. particular contractual provisions involved; and
 - 4. remedy sought.

Article 13

Article 7

Article 19

STATEMENT OF FACTS

Union filed a grievance for an alleged violation of the National Agreement regarding the assignment of light/limited duty. On November 24, 2021, Vice President [REDACTED] requested the advanced notification sent to the Union regarding this limited duty assignment. It was confirmed through the information request that no prior notification was sent. Only notification provided by management was a hand-written note referring to another grievant [REDACTED] from a different case, no notification referring to this grievant [REDACTED] was provided. This grievance continued to move through the grievance process and now sits before me. Three days before this hearing, management informed the Union that they had a copy of the notification that was requested, gave them a copy and planned to introduce that document at the hearing. The Union is objecting to the submission of this document in a bifurcated hearing on arbitrability.

POSITION OF PARTIES

It is the position of the Postal Service that grievance filed was untimely, an argument that the Postal Service never abandoned and carried their argument throughout the grievance process. Postal Service argues that the Union President was mailed a Notification Letter on June 24, 2021, notifying the Union of a limited duty employee working in consumer affairs. The Union filed its first grievance on August 5, 2021, 42 days after the notice. The Union then filed another grievance January 18, 2022, 208 days after the notification. Under Article 15.2, the Union had 14 days from the date that the employee or Union first learned or may reasonably have been expected to have learned of its cause. The grievance should be dismissed due to its untimeliness, per the contract as it was clearly outside of the 14 days. Furthermore, the Postal Service argues that a continuing violation is an argument that may be used when the grievance is based on repeated acts by an employer which individually establish a violation of the contract. Postal Service also argues that the Union never indicated any specific time frames that this alleged ongoing violation occurred, and that burden is on the Union to show that the violation is a continuing one, and clearly this was a one time incident.

It is the position of the Union that although the Postal Service has made the argument of timeliness under Article 15 from the beginning, they are attempting to offer in new documents and evidence at arbitration hearing to support their argument. Union argues that under Article 13.4.M management is required to give the Local Union President advance written notification when it is proposed to reassign an ill or injured light or limited duty employee to a cross-craft assignment into an APWU represented craft. Union argues that in this case the notification given was after the assignment, and Union argues notification was only given as a

response to the grievance filed by Local Union President [REDACTED]. The Union requested this “surprise document” over a year ago and was not provided by management until the day of the hearing.

Additionally, the Union asserts that this is a continuing violation, the notification has been mathematically and chronologically proven to be late, to which there are no contractual exceptions to this rule which creates the continuous violation of Article 13. That notification which was clearly after the assignment was never rectified or corrected to be in compliance with Article 13. Union points out that their requested remedy is only seeking compensation going back 14 days prior to the filing of the grievance as acknowledgment that the violation is continuing and not a violation that was just discovered. Union asks that considering all of the above, the grievance be deemed to be timely and allowed to move forward on the merits.

ANALYSIS

Arbitrability of this case is being challenged by the Postal Service and has been since the original filing. At every step of the grievance process management continued to deny and point out to the Union that they believe the case was untimely and procedurally defective. As part of their timeliness argument, they reference a notification letter dated June 24, 2021, which was provided to the Local Union President to be in compliance with Article 13. Union was able to show that they requested a copy of this notice at the very early stages of this process, and it was never provided by management. So, when this notification finally shows up three days before arbitration, it is immediately met with an objection for new evidence and new argument, and rightfully so.

To allow such an essential document in this case to be introduced for the first time at arbitration hearing would injure the integrity of the grievance process aimed at the encouragement of good faith bargaining. This is a document that was requested and should have been provided well before the hearing, especially when management was reliant upon it for their argument of timeliness. The objection to the introduction of this notice is sustained, and it will not be allowed into the record. Considering that the June notice is not in the record, the ability for management to establish a timeline for awareness becomes considerably more difficult, as the notice was the benchmark which established when the Union should have known that a grievance possibly existed.

Arguments for and against this violation being a continuous are also muddled by management’s inability to give a copy of the notification to the Union. Union made arguments that the notification was done after the assignment and that no corrections were made to rectify the process, and that management was in violation of Article 13. This was partly argued to develop their defense to the

arbitrability challenge made by management, as Union asserts this is a continuing violation. Management request that arguments to the merits of the case be considered and heard only after the bifurcation of the arbitrability has been decided, so no arguments to the merits were presented, as management believe this is a one-time occurrence and not a continuous and ongoing violation. Parties mutually agreed to the bifurcation, and I understand the purpose for this request, however, in practice it can sometimes be very difficult to separate the merits from those arguments made against and for arbitrability. In this case it seems clear that more challenges and arguments are to come and will be developed through a presentation of the merits, however there was a need for a ruling on the admission of this notification as it plays a critical role in this case. Considering the sustained objection to the introduction of the notification letter as new evidence, The Postal Service was unable to meet their burden to show that the grievance should be denied, and a hearing on the merits should not be had.

AWARD

The grievance is found to be filed timely, this grievance is arbitrable and should move forward on the merits. Arbitrator will maintain jurisdiction over this case until the merits have been heard or the grievance has been resolved. It is so ordered and awarded.

RESPECTFULLY SUBMITTED,

A large black rectangular box redacting the signature of the arbitrator.

Date: July 9, 2023