

CORE ISSUE: ARTICLE 28, LETTER OF DEMAND

DECISION:

The Dispute Resolution Team has **RESOLVED** the grievance. The grievance does have merit. The Letter of Indebtedness is void. Carrier Smith' claim for a waiver of the Letter of Demand shall be granted.

EXPLANATION:

The Step B Representatives in determining this case took into account the statements and positions presented. Also reviewed were the National Agreement and higher-level decisions regarding letters of demand. The question to be answered is did management violate the National Agreement by issuing a Letter of Demand for a salary overpayment due to the 1995 Memorandum of Understanding regarding Promotion Pay.

Carrier Smith received a letter on advising her of a debt of \$873.40 per "Memorandum of Understanding NALC Dated June 28, 1995 Salary Overpayment." The carrier subsequently filed a request for a waiver and also requested a detailed explanation for the reasons for the overpayment. We will now review the regulations governing Letters of Demand. Per the Joint Contract Administration Manual (JCAM):

28.4.A Section 4. Collection Procedure

- A. If a grievance is initiated and advanced through the grievance/arbitration procedure or a petition has been filed pursuant to the Debt Collection Act, regardless of the amount and type of debt, collection of the debt will be delayed until disposition of the grievance and/or petition has (have) been had, either through settlement or exhaustion of contractual and/or administrative remedies.
- B. No more than 15 percent of an employee's disposable pay or 20 percent of the employee's biweekly gross pay, whichever is lower, may be deducted each pay period to satisfy a postal debt, unless the parties agree, in writing, to a different amount.

Limit on deduction amount. This language, also strengthened in the 1994 Agreement, sets absolute limits on the amount the employer may deduct from an employee's pay in collection of a debt, unless the employee agrees otherwise, voluntarily and in writing.

Waiver of Employer Claims. Many employer claims involve mistakes in which carriers were overpaid. Section 437 of the ELM gives carriers the right to file for wavier of a claim for overpayment. This section, titled "Waiver of Claims for Erroneous Payment of Pay," outlines the steps that carriers must follow to request a waiver.

Under this process the carrier files Form 3074, Request for a Wavier of Claim for Erroneous Payment of Pay, upon receipt of the Postal Service's letter of demand for "recovery of pay which was erroneously paid." The completed form should contain all the information the carrier may have concerning the overpayment, including a statement of the circumstances which the carrier feels would justify a wavier of the claim-typically. That the mistake was the Postal Service's and was not connected in any way to what the carrier did or did not do, and that it would be unfair to require repayment under the circumstances.

The waiver is reviewed by the installation head who adds any relevant facts or circumstances, including the reason for the overpayment. The installation head then makes a recommendation for approval or disapproval of the waiver, and forwards the Form 3074 to the appropriate compensation unit, which adds any pertinent comments and forwards the entire file to the Postal Data Center (PDC). ELM Section 437.6 provides that:

Section 437.6 The PDC will waive the claim if it can determine from a review of the file that all of the following conditions are met.

1. The overpayment was result of administrative error of the USPS that was not caught and corrected at any point of the pay process.
2. Everyone involved in the request for the waiver acted reasonably under the circumstances, without any indication of fraud, misrepresentation or lack of good faith.
3. Collection of the claim would be against equity and good consciences and would not be in the best interests of the USPS.

The above Articles give a clear course of action for Carrier Smith to take. The carrier did receive a denial to the initial request for waiver but did not receive any explanation or details. As was her right, the carrier filed a grievance and request a second time “detailed explanation for the reason the Postal Service believes I was overpaid...” The carrier receives a denial to this request and the only details given are the reference to the Memorandum of Understanding (MOU).

The Dispute Resolution Team in reviewing the case file can find no supporting documentation that show the carrier was overpaid. The PS Form 1903-DZ, Invoice and Statement and the Retirement Salary History computer runoff sheets can provide no tangible evidence that show why, when or how much the carrier was overpaid. In rendering a decision in this case, The main two issues that must be resolved is first; must the Postal Service provide documentation to establish monies are own to them and second; was the Postal Service proper in denying the waiver due to part three of Section 437.6 of the ELM. The question of the Postal Services responsibility to provide documentation of indebtedness is outline in many decisions. In reference to the documentation issue, we will reference Arbitrator La Penna’s decision A94N-4A-C, 98009485 dated July 23,1998:

On the merits, in order for the Service to validate its Letter of Demand, it must provide supporting documentation to establish that the grievance owes to the Service the amount demanded at the time the letter issues. The Service clearly did not do so at the time, nor does it appear that the Service did so during and prior to the grievance procedure steps as reflected...

...During the arbitration, the Service produced a number of documents calculated to establish the existence of the debt which it demands grievant repay to the Service...

...The run-off and the other exhibits may establish something about grievant’s pay-schedule, but nowhere is there a clear showing that the grievant was overpaid the amounts contained in such exhibits. The information contained in the runoff and other documentary evidence may mean anything and thus they prove nothing...

...The arbitrator finds that the Letter of Demand did not comply with the mandate of Article 28 of the National Agreement, which requires that:

“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 therefore.”

At this time, it should be noted that the arbitrator in examining Article 28, in its entirety, is of the opinion that the Article’s original and main purpose was to provide the Service with a means of collecting on claims against employees who intentionally or negligently caused losses to the Service, its funds, property, vehicles or the mails. This can be seen by the first sentence of Article 28, which states:

“The parties agree that continued public confidence in the Postal Service requires the property care and handling of the USPS property, postal funds and the mails.”

The remainder of Article 28 supports this opinion and the paragraph titles reflect their contents.

“Section 1 - Shortages in Fixed Credits.”

“Section 2 - Loss or damage of the Mails.”

“Section 3 - Damage to USPS Property and Vehicles.”

“Section 4 - Collection Procedure.”

The omission of salary overpayment among the claims which may be collected under Article 28 does not exclude its application to overpayment of salary. However, when it does deal with an overpayment of wages, the arbitrator believes that the mandate to produce evidence of the overpayment in every respect falls upon the employer, Service, in a much more stringent and encompassing way than would be required of the Service in the types of cases that were originally contemplated in the Article.

The effect that this opinion has on the determination of the arbitrator in this case is that the Service must give the reasons for its demand in a much more detailed and explanatory manner since the overpayment is entirely the fault of the Service and the Service is the only party who has the information relating to that payment and/or overpayment as to which it now complains and seeks re-payment. Thus, the Service must go further in order to comply with Article 28 than it would in a case where an employee lost stamps or lost payment for inadequate postage or any case where the employee has caused the loss to the Service. In the case at bar, it is the Service itself that has caused the loss to the Service. Thus, the burden to explain the reason for the demand is expanded and must be met completely for the Service to claim compliance with the mandate of Article 28. In this case, it did not meet its burden of proof of compliance.

The information in the case file of this grievance, contains less evidence than the referenced decision above. The provisions to collect overpayments from carriers does exist under Article 28 but The Postal Service has the responsibility to “give the reasons for its demand in a much more detailed and explanatory manner since the overpayment is entirely the fault of the Service and the Service is the only party who has the information relating to that payment and/or overpayment...” Clearly, a reference to a 1995 Memorandum of Understanding and computer runoff sheet does not meet these requirements. The Postal Service has a higher responsibility in case of this type. The documentation provided to the carrier just does not meet this burden.

The second issue of whether the Postal Service was proper in denying the waiver due to part three of Section 437.6 of the ELM will now be covered. We will reference Arbitrator Snow's decision W1C-5F-C, 9030 dated October 25, 1984:

Article 19 of the parties' agreement incorporates various manuals into the parties' collective bargaining agreement. Among provisions incorporated into the agreement by Article 19 is Section 437.6 (.61) (a), (b) and (c) of the Employer's Employee and Labor Relations Manual. Section 437.6 states that the Employer will waive claims by the Employer for overcompensation if certain conditions have been met. The provision states:

437.6 Action by Postal Data Center (PDC)

437.61 The PDC will waive the claim if it can determine from a review of the file that all of the following conditions are met:

- a. The overpayment was result of administrative error of the USPS that was not caught and corrected at any point of the pay process.
- b. Everyone involved in the request for the wavier acted reasonably under the circumstances, without any indication of fraud, misrepresentation or lack of good faith.
- c. Collection of the claim would be against equity and good consciences and would not be in the best interests of the USPS.

It is the requirements of 436.6 (.61) (c) that are most difficult to determine. When collection of a claim would be "against equity and good conscience" or would not be "in the best interest" of the Employer cannot always be determined with scientific precision. The parties, however, have provided some insight into the meaning of this requirement in an earlier version of the Employee and Labor Relations Manual, which incorporated Public Law 90-616. Section 755.9 (93) (b) stated:

- b. Collection action under the claim would be against equity and good conscience and not in the best interests of the United States. Generally these conditions will be met by a finding that the erroneous payment of pay occurred through administrative error and that there is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee, former employee or any other person having an interest in obtaining a waiver of the claim. (See, Joint Exhibit No. 2 (16), emphasis added).

The grievant should have received a waiver of his claim in this case. The overpayment was the clear result of an administrative error by the Employer. The grievant filed for a change in position from a Level 6 MPLSM clerk to a Level 5 NIXIE distribution clerk. The Employer transferred the grievant but failed to arrange the corresponding salary adjustment. If fault must be assigned with regard to the resulting two and a half years of overcompensation, it must fall on the Employer.

The grievant acted reasonably under the circumstances. There was no indication of any intent to defraud, misrepresent, to act with fault or any showing of a lack of good faith. The grievant believed he could remain a Level 6 worker until he received a Form 50 from the Employer indicating that he had been changed to Level 5... There was no evidence showing the grievant understood that by changing jobs he was changing pay levels. . There simply was no showing of any action on his part that constituted unreasonableness or bad faith...

...The grievant's request for a waiver of the Employer's overcompensation claim in this case has been made in good conscience, and it is in the best interest of the employer not to pursue the collection of the overpayment. Under Section 755.9 (93) (b) of the earlier postal service manual,

such a claim must have been the result of administrative error; and the grievant must have acted in good faith and without fraud and reasonably in order for the claim by the Employer not to be in good conscience or in the best interest of the Postal Service. The grievant's overpayment clearly resulted from an administrative error. He has acted reasonably and has done so in good faith and without fraud. Consequently, it is reasonable to conclude that the Employer's claim for overpayment has not been made in good conscience and is not in the best interests of the Employer. Accordingly, it was not reasonable to deny the grievant's request for a waiver.

The overpayment in this case was not in any fashion the fault of the carrier. The error was an administrative one on the part of the Postal Service. The carrier was incapable of knowing or finding out about the error. Thus, he acted reasonably under the circumstances and is not guilty of any fraud, misrepresentation or lack of good faith. It can be reasonably argued that the collection of the monies would result in a hardship on the employee through no fault of his own. This meets the requirement that the claim be waived if the collection of the claim would be against equity and good conscience and would not be in the best interests of the USPS. The above reference decision outlines that this was one of the intentions of Section 437.6 of the ELM.

The Dispute Resolution Team have determined that the grievance does have merit. The Letter of Indebtedness is void. Carrier Melendez' claim for a waiver of the Letter of Demand shall be granted.