

NATIONAL ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION.

between

UNITED STATES Postal Service

AND

**AMERICAN POSTAL WORKERS UNION
AFL-CIO**

CASE NO.: Q06C-4Q-C 09134027

CPU - Appeal Date

BEFORE: Linda S. Byars

APPEARANCES:

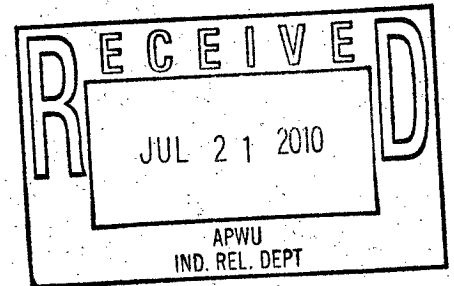
For the APWU: Anton G. Hajjar

For the USPS: Lynn D. Poole

Place of Hearing: Washington, D.C.

Date of Hearing: January 12, 2010

Post-Hearing Briefs: Dated March 29, 2010



Award Summary

The date of the appeal of the original grievance, G90C-4G-C 94016793, is March 16, 1995. Paragraph 5 of the June 3, 2004 MOU requires that the national dispute be placed back on the national arbitration docket using the date of the appeal of the original grievance. The June 3, 2004 MOU is an agreement by the parties to change the normal order, i.e., an exception to the Article 15 language. Until a pre-1998 grievance is settled, the exception language controls. The Grievance shall be placed on the national arbitration docket with the appeal date of March 16, 1995.

BACKGROUND

In recognition of the changes negotiated in the Article 15 procedures of the 1998-2000 National Agreement, the parties agreed to a Memorandum of Understanding dated June 3, 2004. [Postal Service Exhibit No. 2 and APWU Exhibit No. 4.] The June 3, 2004 MOU required as a first step that the parties' national representatives meet in an attempt to resolve all grievances pending at the national level that were appealed to the national level from Step 3 and/or referred from area/regular arbitration under the pre-1998 Article 15 process. [Postal Service Exhibit No. 2 and APWU Exhibit No. 4.] As part of the review, three grievances originating in Enid Oklahoma, two at Vance Air Force Base (G90C-4G-C 94016792 and G90C-4G-C 94016793) and one at La Mesa Station (G90C-4G-C 4016795), were returned to Step 3.

By letter dated January 13, 2006, the APWU initiated a dispute at Step 4 (Q00C-4Q-C 0610364) based on the three Enid, Oklahoma grievances. [Postal Service Exhibit No. 5 and APWU Exhibit No. 6.] On May 17, 2007 the parties reached a pre-arbitration settlement on the interpretive issue, i.e., whether there is a violation of the national agreement, specifically Articles 1, 7, and 19, when contracts are let for a CPU to contractors who do not own the

property/facility. [Postal Service Exhibit No. 9 and APWU Exhibit No. 7.]

Following the agreement on the interpretive issue, the parties at the local level discussed the three Enid, Oklahoma grievances but did not resolve them. The grievances were scheduled for regional arbitration, and on November 7, 2008 Arbitrator Maretta Comfort Toedt found that the May 17, 2007 settlement agreement resolved an interpretive issue and that the three Enid, Oklahoma grievances were ready to be heard on the merits. [Postal Service Exhibit No. 10 and APWU Exhibit No. 8.] On February 5, 2009 Arbitrator Toedt presided at hearing on one of the Enid grievances, G90C-4G-C 94016795, and rendered an award dated April 8, 2009. [APWU Exhibit No. 9.]

By letter dated March 5, 2009, the APWU initiated a dispute at Step 4 of one of the Enid grievances, G90C-4G-C 94016793. [Joint Exhibit No. 2, pp. 8-9.] The APWU advised the Postal Service of its expectation that the grievance would be placed on the arbitration docket based on the original appeal date of March 13, 1995¹ should the parties be unable to resolve the issue. [Joint Exhibit No. 2, pp. 8-9.] By letter dated June 4, 2009 and referencing Case No. Q06C-4Q-C 09134027, the Postal Service set forth its position that the issue raised in the grievance was resolved by the May 17,

2007 pre-arbitration settlement agreement and that an appeal to national level arbitration by the APWU should be treated as a new appeal. [Joint Exhibit No. 2, pp. 3-5.] By letter dated June 10, 2009 and referencing Case No. Q06C-4Q-C 09134027, the APWU set forth its position. [Joint Exhibit No. 2, pp. 6-7.] By letter dated June 22, 2009, the APWU appealed Case No. Q06C-4Q-C 09134027, the Grievance, to arbitration. [Joint Exhibit No. 2, p. 2.] By letter dated November 23, 2009, the parties jointly scheduled the Grievance for arbitration with the notation "(Bifurcated to address issue of correct appeal to arbitration date)." [Joint Exhibit No. 2, p. 1.]

On January 12, 2010 the Grievance came before the Arbitrator for hearing on the procedural issue. At the request of the parties, the record remained open until March 29, 2010 for post-hearing briefs. The parties agree that the issue is whether the dispute should be scheduled for arbitration based on the appeal date of March 16, 1995 or of June 22, 2009.

OPINION

Clearly, the APWU intends to have the Grievance heard and decided at the national level. The question at this time is not whether the Grievance can be appealed to arbitration,

¹ The arbitration appeals of the Enid grievances (APWU Exhibits 5A,5B,

and decided on the arbitrability issue and on the merits, if necessary. Rather, the question here is where the Grievance should be placed in line for arbitration. The Postal Service acknowledges that the parties have agreed to bifurcate the hearing to permit a decision on the correct date of appeal prior to a hearing on the merits.

The controlling language, Paragraph 5 of the June 3, 2004 MOU, provides as follows:

In the event that either party's national representative determines an issue is interpretive and initiates a dispute, and the dispute is subsequently appealed to national arbitration, it will be placed back on the national arbitration docket using the date of the appeal of the original grievance. Accordingly, such dispute should contain a reference to the original grievance number and the original date of appeal to national arbitration. [APWU Exhibit No. 4 and Postal Service Exhibit No. 2.]

The original arbitration appeal date of the Enid grievances is March 16, 1995. [APWU Exhibit Nos. 5A, 5B, and 5C.] The APWU maintains that the language of Paragraph 5 controls and leads to only one conclusion, i.e., the Grievance is to be placed on the national arbitration docket with the date of March 16, 1995.

As the Postal Service maintains, the parties addressed interpretive issues related to the Enid grievances at the national level and reached a national level settlement dated May 17, 2007. By award dated November 7, 2008 Arbitrator

and 5C) are dated March 16, 1995.

Maretta Toedt addressed a threshold issue with respect to the three Enid grievances and decided that they should be heard on the merits. Arbitrator Toedt heard the grievance arising at La Mesa Station, G90C-4G-C 94016795, and issued a decision dated April 8, 2009 on the merits. The other two grievances, G90C-4G-C 94016792 and G90C-4G-C 94016793 arising at Vance Air Force Base, have not been heard on the merits, and the APWU is appealing G90C-4G-C 94016793 as containing an interpretive issue. The APWU initiated a dispute to national arbitration, and pursuant to the June 3, 2004 MOU it is to "be placed back on the national arbitration docket using the date of the appeal of the original grievance," i.e. March 16, 1995.

If, as the Postal Service maintains, the interpretive issue(s) in the 1995 grievance appeal was resolved by the May 17, 2007 settlement agreement and the Toedt decisions, then the Grievance will be decided on the threshold issue at arbitration.² However, whether the interpretive issue is the same as the one settled by the May 17, 2007 settlement agreement is not the issue to be decided here. To decide that issue would nullify the agreement by the parties to bifurcate the hearing for a decision on the correct appeal date.

² If the parties agree, that issue could be decided with the submission of written arguments and without the necessity of an additional hearing day.

The Postal Service further maintains that if the issue is not identical to the one raised in 1995, then it is a new issue and the June 3, 2004 MOU does not preserve the original appeal date. However, as stated, that issue is not yet at arbitration. The parties' agreement to bifurcate to address the issue of the correct appeal to arbitration date necessitates such a decision prior to the decision that the Postal Service now seeks.

The Postal Service maintains that the June 3, 2004 Memorandum of Understanding creates a singular, unique exception to the normal Article 15 appeal process to address a very specific problem that the parties were having and to give the pre-1998 grievances the benefit of the new procedure, i.e., a one-time benefit. It is the Postal Service's position that once a grievance or set of grievances has received the benefit of the exception provided for in the June 3, 2004 MOU and has been advanced to the head of the line once; thereafter, the grievance must adhere to the negotiated Article 15 appeal procedure. The three Enid grievances, having invoked the MOU scheduling exception in 2006, were placed at the head of the line pursuant to the provisions of the MOU. Therefore, the Postal Service submits that the APWU is not entitled to another scheduling exception for any of the Enid grievances.

As the Postal Service recognizes, the record demonstrates that the parties did not address the possibility of more than one attempt to invoke the retroactive date of a pre-1998 appeal when they negotiated the June 3, 2004 MOU. However, the Postal Service maintains that the thrust of the language is more consistent with the view that the MOU addressed a singular process and not an ongoing special process that would give the pre-1998 grievances super-standing under the new Article 15 procedure. Although the Postal Service contends that the heading of the MOU, as well as the controlling paragraph having been written in the singular, supports its interpretation, the limitation the Postal Service seeks is not evident in the language.

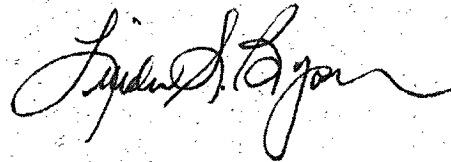
The original appeal date of Case No. G90C-4G-C 94016793 is March 16, 1995, and Paragraph 5 of the MOU requires that the national dispute be placed back on the national arbitration docket using the date of the appeal of the original grievance. The June 3, 2004 MOU does not preclude using the original appeal date when a grievance is appealed to national arbitration for a second time. Contrary to the Postal Service argument, the language of the June 3, 2004 MOU does not reflect the intent and expectation of the parties that its application would be a one-time event.

As the Postal Service maintains, the National Agreement mandates that appeals, as a general rule, be scheduled in the

order of appeal and that agreement of the parties is required to change the normal order. The June 3, 2004 MOU is an agreement by the parties to change the normal order. It is, as the Postal Service agrees, an exception to the Article 15 language. Until a pre-1998 grievance is settled, the exception language controls. Accordingly, the Arbitrator finds for the APWU and makes the following Award.

AWARD

The Grievance shall be placed on the national arbitration docket with the appeal date of March 16, 1995.



DATE: May 4, 2010

Linda S. Byars, Arbitrator