
In the Matter of the Arbitration Between

UNITED STATES POSTAL SERVICE

and

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Case Number: Q10C-4Q-C 10670819
(Global Settlement Remedy Agreement Grievance)

Videoconference hearings were held in the above-entitled on July 13 and 14, 2022 before Daniel F. Brent, duly designated as Arbitrator. Both parties attended this hearing, were represented by counsel, and were afforded full and equal opportunity to offer testimony under oath, to cross examine witnesses, and to present evidence and arguments. A verbatim transcript was made of the proceedings, and both parties submitted post-hearing briefs. The record was declared closed on November 17, 2022.

APPEARANCES

For the Employer:

Kevin B. Rachel, Esq.

Shannon Richardson, Manager of Contract Administration

Dion Mealy, Labor Relations Specialist-Contract Administration

Ricky Dean, Former Manager of Contract Administration

Melissa Barber, Executive Manager of Payroll

Thomas Elias, Labor Relations

For the Union:

Melinda K. Holmes, Esq. of Murphy Anderson, Esqs.

Adam Breihan, Esq. of Murphy Anderson, Esqs.

Charley Cash, Industrial Relations Director

Lamont Brooks, Clerk Division Director

Lin Pallas-Barber, Assistant Clerk Director

Sam Lisenbe, Assistant Clerk Director

Mike Foster, Motor Vehicle Division Director

Idowu Balogun, Maintenance Division Director

ISSUE SUBMITTED

Did the Postal Service violate the national agreement in its handling of the payment errors under the Global Settlement Remedy Agreement (GSRA)?

If so, what shall be the remedy?

RELEVANT CONTRACTUAL PROVISIONS

Article 28: Employer Claims

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

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 a 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 parties agree, in writing, to a different amount.

Article 28.4: Demand Letters

Management cannot cash an employee's payroll check to liquidate a debt without the employee's permission and the Inspection Service cannot withhold an employee salary check when the employee is issued a Letter of Demand. Rather, when collecting a debt from an employee, the Postal Service must adhere to the requirements of Article 28 and Chapter 460 of the Employee and Labor Relations Manual (ELM).

All employees must receive written notice (Letter of Demand) of any money demand for any reason. The Letter of Demand, which must be signed by the postmaster or his/her designee, must notify the employee of a Postal Service determination of the existence, nature, and amount of the debt.

A Letter of Demand must specify the options available to the employee to repay the debt or to appeal the Post Service's determination of the debt or the proposed method of repayment. Requirements governing the collection of debts from bargaining unit employees are in ELM, Section 460. If a grievance is filed regarding a demand for payment or a petition is filed pursuant to the Debt Collection Act, such demand is held in abeyance until final disposition of the grievance or petition regardless of the amount of the demand or type of debt.

EMPLOYEE LABOR RELATIONS MANUAL PROVISIONS

426.21 Right to Grieve Letters of Demand

A bargaining unit employee or the employee's union has the right in accordance with the provisions of Article 15 of the applicable collective bargaining agreement to initiate a grievance concerning any letter of demand to challenge (a) the existence of a debt owed to the Postal Service, (B) the amount of such debt, (C) the proposed repayment schedule, and (D) any other issue arising under Article 28 of the applicable collective bargaining agreement. Care must be taken to ensure that any letter of demand served on an employee provides notice of the employee's right to challenge the demand under the applicable collective bargaining agreement.

437.6 Action by Eagan Accounting Service Center

The Eagan ASC waives the claim if it can determine from a review of the file that all of the following conditions are met:

- a. The overpayment occurred through administration error of the Postal Service. Excluded from consideration for waiver of collection are overpayments resulting from errors in time keeping, key punching, machine processing of timecards or time credit, coding, and any typographical errors that are adjusted routinely in the process of current operations.
- b. Everyone having an interest in obtaining a waiver acted reasonably under the circumstances, without any indication of fraud, misrepresentation, fault, or lack of good faith.
- c. Collection of the claim would be against equity and good conscience and would not be in the best interest of the Postal Service.

437.7 Appeal of Disallowed Request

437.71 Appeal Procedure

When a request for a waiver has been partially or completely denied, the applicant may submit a written appeal to the Eagan ASC within 15 days of receipt of the determination. The appeal letter should clearly indicate that the employee is appealing the disallowance of the waiver request and explain in detail the reasons why the employee believes the claim should be waived.

437.72 Final Decision

The Eagan ASC then forwards the appeal, with the entire case file, to the applicable area Finance manager for area employees or to the manager of National Accounting at Headquarters for Headquarters and area office employees for a final decision. The area Finance manager or manager of national accounting advises the employee concerned and the Eagan ASC of his or her final decision. If necessary, the Eagan ASC adjusts its records.

FINDINGS OF FACT

In 2010, the United States Postal Service (hereafter, USPS, the Postal Service, or the Employer) and the American Postal Workers Union (hereafter, APWU or the Union) entered into a Global Settlement Memorandum of Understanding resolving their dispute about Postmasters and other supervisory personnel performing bargaining unit Clerk duties in various post offices. The Postal Service committed to paying \$56,000,000 in damages to compensate for lost wages to approximately 13,000 currently employed clerks, retired clerks, and former clerks who had left the Postal Service.

The parties agreed that the payouts under the Global Settlement Memorandum of Understanding would compensate employees for Article 1.6B violations commencing in 2010. After defining a procedure in which the Employer and the Union exchanged information, the parties also agreed that the Union would compile a list of bargaining unit employees who had been adversely affected and determine the amount from the settlement pool that would be paid to each aggrieved employee. The Postal Service undertook to identify a current address for all affected employees, retirees, and former employees who had separated from the USPS. The parties further agreed to hold back twenty-per cent of the settlement, or approximately \$12,000,000, to fund a second round of

payments in the event that additional aggrieved employees were discovered and to rectify any incorrect payments.

After the Postal Service received the Union's list of payees and individual payment amounts, Postal Service management officials undertook to disburse appropriate payments to aggrieved employees, retirees, and former employees. The first tranche of \$44,000,000 was disbursed in January 2016. When active employees were paid, payments to retirees were delayed because the Employer's GATS computer system was not designed to pay people who were not currently on USPS employee rolls.

The Employer's disbursement process resulted in numerous errors, consisting of underpayments, overpayments, and failures to pay settlement payees on the Union's list. The situation was complicated by the inability of the Postal Service to locate certain retirees or former employees who were eligible to receive payment from the settlement. Ultimately, many of the problems locating retirees and former employees were resolved.

Although the parties worked collaboratively to achieve the list that was described at arbitration as "99.99%" accurate, problems in getting correct payments to employees persisted, exacerbated because the Employer denied the Union's request to issue a separate check or direct deposit payment to payees identifying the source as being the Global

Settlement payout. Instead, the Postal Service included the payout for active employees with a regular payroll check.

The Employer included on either the paycheck or the paystub that included the Global Settlement payment a terse and unexplained notation, “20/1998”, referring to the earliest pay period in fiscal year 1998 that was covered by the grievances addressed by the Global Settlement. According to the Employer, this notation only appeared on an active employee’s paystub and did not identify what the “20/1998” amount represented. The parties disagreed at arbitration as to whether that notation was provided on the paycheck or the paystub. In any event, there was no reliable way for a payee independently to appreciate the significance of this unexplained payroll notation or to discern the reason for extra funds or if the amount was correct.

Approximately 1,400 payees were overpaid in the aggregate amount of about \$3,400,000. The Postal Service contacted these payees and demanded return of the overpaid amounts. Some payees complied and some ignored the request, in part based on the inadequacy of the notices they received, as the Employer’s Demand Letter did not explicitly identify the overpayment as related to the Global Settlement Memorandum of Agreement, rather than to resolution of other grievances for which individual payees may have been entitled to a separate remedy. Nor did the letter attribute the overpayment to the Employer’s error or state the actual amount the payee should have received.

The confusion generated by the process implemented by the Postal Service created substantial problems for both the Union and the Employer in achieving a prompt and accurate disbursement of the escrowed \$12,000,000 of Global Settlement funds in the second tranche and precipitated the instant grievance. In order to recoup overpayments not voluntarily returned by current bargaining employees, former employees, and retirees in response to the Employer's initial Demand Letters, the Employer unilaterally and without consultation or collaboration with the Union declared the overpayments to be debts owed to the Postal Service and invoked collection procedures customarily implemented to recoup routine payroll overpayments or other debts owed by employees to the Postal Service who resisted informal efforts to retrieve erroneous payments of wages or benefits.

As a primary mechanism for recouping funds erroneously transmitted to Global Settlement payees, the Employer initiated collection procedures through the Department of the Treasury and other proceedings to attach portions of employees' pension payments, Social Security benefits, tax refunds, or other payments payable by the federal government. Affected employees, retirees, and former employees were subjected to deductions from monies owed to them that included penalties and additional fees substantially beyond the initial Global Settlement overpayment.

The Union grieved the Employer's attempt to collect overpayments and alleged that the Employer negligently disbursed the amounts listed in the Union's compilation of funds owed to payees under the Global Settlement Remedy Agreement; improperly sought repayment after the instant grievance had been filed, which should have stayed all collection activity; and thus violated both the Global Settlement Remedy Agreement and the collective bargaining agreement. The Union also asserted that the Employer's persistent failure to provide timely and complete information to beneficiaries of the Global Settlement Memorandum of Agreement, especially to payees who received and innocently spent inadequately explained disbursements, imposed substantial avoidable harm on these payees resulting in the imposition of the excessive fees and penalties caused by the collection methods invoked by the Employer. Characterizing the collection procedures invoked by the Employer to recoup overpayments as onerous and unwarranted and the Employer's fulfillment of the terms and conditions of the Global Settlement Remedy Agreement effectuating the Global Settlement Remedy Memorandum of Understanding as manifestly inadequate, the Union sought as a remedy waivers excusing overpaid payees from repaying overpayments they had received and reimbursement of all penalties and interest charged by outside agencies in conjunction with the attachment of payees' funds.

The Employer denied the Union's waiver request, contending that the overpayment situation did not fulfill the conditions for granting waivers established by the USPS Employee Labor Relations Manual (hereafter, ELM). According to the Employer, the overpayments at issue had been caused by computer errors within the definition of excusable administrative errors and thus were exempt from waivers.

According to the Union, no technical mistake by a computer or other exculpatory or mitigating circumstance caused the erroneous payments, as the fault for these circumstances was solely attributable to the Employer's negligence in disbursing funds as specified by the list generated by the Union of payees and amounts due. The Union further asserted that the Employer's intransigent responses to the Union's multiple requests promptly to notify overpaid payees of their obligation to repay excess Global Settlement benefits unnecessarily compounded the detriment experienced by aggrieved employees.

The grievance was initiated by the Union on January 16, 2016 and further elaborated on January 26, 2016 in an email from Lamont Brooks, APWU Clerk Division Director, to Ricky Dean, then the USPS Manager of Contract Administration, conveying the Union's position that "any overpayments be waived under Section 437 of the Employee and Labor Relations Manual" and that "all payees are entitled to their contractual and or legal rights under the law." (Union Exhibit 30). The invocation of this process resulted in a meeting at Step Four of the contract grievance

procedure. The parties were unable to resolve their dispute within the grievance procedure, and the matter was brought to arbitration.

DISCUSSION AND ANALYSIS

The instant dispute arose out of a settlement made between the U.S. Postal Service and the APWU at the national level. It is, therefore, appropriate for the Union to resolve its dispute by filing a national level grievance. The instant dispute was properly filed pursuant to Article 15 as a Step Four National Grievance.

It is undisputed that neither the Union nor the recipients of any overpayments were at fault for causing the overpayments. If the Employer had properly disbursed the amounts listed in the Union's compilation of payments under the Global Settlement Remedy Agreement, the instant grievance would be unnecessary. The Employer characterized its overpayments to more than 1300 payees pursuant to the Global Settlement Remedy Agreement (GSRA) as the type of error for which waivers are not available under applicable Postal Service policies. However, the Employer's position is weakened by several undisputed facts.

First, the Employer bore sole responsibility to effectuate payments from the \$56,000,000 Global Settlement Remedy Agreement to approximately 13,000 employees, retirees, and former employees in the

amounts specified on the list prepared by the Union for allocation of the settlement funds. If the inaccurate payments were attributable to errors on the Union's list, a meritorious basis to relieve the Employer of responsibility for the manner in which Postal Service management effectuated the disbursement of the payments might be reasonable. However, the evidentiary record did not establish any inaccuracy in the disbursement list or the type of unforeseeable or unavoidable computer-based or other administrative errors that might, pursuant to the Employee and Labor Relations Manual (hereafter, ELM) or other source, relieve the Employer of responsibility for the inaccurate payments it disbursed.

The Employer explicitly stated that the overpayments were "due to system processing errors" (Joint Exhibit 4). The evidentiary record established, however, that the Employer's computer program GATS did not malfunction, justifying a conclusion that the erroneous payments were not due to "errors in time keeping, key punching, machine processing of timecards or time credit, coding, and any typographical errors that are adjusted routinely in the process of current operations", as cited in the ELM, or caused by a programming malfunction or other non-human error that might explain the large number of underpayments and overpayments. Therefore, the defense of "administrative error" raised by the Employer to explain the chain of events that precipitated

the instant grievance did not establish a compelling basis to excuse the Employer's error as contemplated in Section 437.6 of the ELM.

The Union established that recipients of compensation under the Global Settlement Agreement were not advised what their payment was for, the amount they should have received, or the basis on which these amounts were calculated as overpaid. Nor were payees advised of all the available procedures for appealing the demand letters.

The Union also established that it had asked the Employer to provide such explanation contemporaneously with the payments, rather than sending a payment as part of a regular paycheck with the enigmatic notation "20/1998" that provided no independent basis for any payee to know that the "20/1998" payment emanated from the Global Settlement or that the amount attributable to the Global Settlement might be an overpayment. The responsibility for this lack of clarity rests solely with the Employer.

Moreover, the Employer did not discuss with the Union the methods it intended to implement to recoup overpayments before implementing the disputed methods cited in the Union's grievance. The Employer thereafter refused for more than a year to issue a letter to overpaid employees, retirees, and former employees that clearly attributed to the Global Settlement Remedy Agreement the enigmatic item added to a regular paycheck or separately disbursed to retirees and former employees, explained the source of the overpayment to be an

error by the Employer, provided guidance regarding the employee's responsibility to repay or protest repaying the overpayment, and set forth how that could be accomplished. The Employer's resistance to clarifying the situation for payees as soon as the overpayments were discovered was exacerbated by the Employer's arbitrary delay in addressing these overpayments for more than a year after complaints were registered with the Union and communicated to the Employer.

The Postal Service treated the Global Settlement overpayments as Employee payroll-related debts and unilaterally decided to begin formal collection actions to recover the overpayments as if the payees had been at fault for not safekeeping Postal Service funds for which they were responsible. These collection procedures were unreasonably initiated without adequate explanation to affected bargaining unit employees, retirees, and former employees regarding the various repayment options that might be available to employees to rectify these overpayments, including by application for a waiver. Moreover, the collection efforts were not stayed after the instant grievance was filed, as explicitly required by Article 28, Section 4(A) of the collective bargaining agreement which provides, in relevant part:

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 a settlement or exhaustion of contractual and/or administrative remedies.

The Employer's initiation of collection activities should have been stayed upon filing of the instant National Grievance by the APWU. The Postal Service violated Article 28 by continuing to pursue recoupment of overpayments from employees and retirees after the instant grievance was filed.

Furthermore, ELM Section 460.421 provides that a stay will be effectuated if an employee challenges "(a) the existence of a debt owed to the Postal Service, (b) the amount of such debt, (c) the proposed repayment schedule, and/or (d) any other issue arising under Article 28 of the applicable collective bargaining agreement." The Union sought a stay of collection actions pursuant to Article 28, as well as a waiver of the overpayments. Therefore, the Employer's pursuit of recoupment after receiving notice of the filing of the instant grievance violated the National Agreement and ELM Section 460.421. Moreover, the debts of many payees were augmented by other agencies enlisted to collect the overpayments to include substantial fees and penalties.

The Demand Letters issued by the Employer did not clearly set forth the source of the payment, the nature of the settlement, the amount to which each employee was entitled, and the alleged overpayment. The parties reasonably expected such clarity and specificity when they negotiated Article 28. Article 28, Section 4 provides:

All employees must receive written notice (Letter of Demand) of any money demand for any reason. The Letter of Demand, which must be signed by the postmaster or his/her

designee, must notify the employee of a Postal Service determination of the existence, nature, and amount of the debt.

A Letter of Demand must specify the options available to the employee to repay the debt or to appeal the Post Service's determination of the debt or the proposed method of repayment. Requirements governing the collection of debts from bargaining unit employees are in ELM, Section 460. If a grievance is filed regarding a demand for payment or a petition is filed pursuant to the Debt Collection Act, such demand is held in abeyance until final disposition of the grievance or petition regardless of the amount of the demand or type of debt.

Article 28, Section 4 of the Joint Contract Interpretation Manual

(JCIM) further provides that:

In addition, management cannot cash an employee's payroll check to liquidate a debt without the employee's permission and the Inspection Service cannot withhold an employee salary check when the employee is issued a Letter of Demand. Rather, when collecting a debt from an employee, the Postal Service must adhere to the requirements of Article 28 and Chapter 460 of the Employee and Labor Relations Manual (ELM).

The Employer's Demand Letters did not accurately describe the full range of options to submit repayment or protest repayment that were available to the employees under the Employee and Labor Relations Manual and the contract grievance procedure. Consequently, these letters cannot be construed as valid compliance with applicable governing provisions of the parties' collective bargaining agreement or the Joint Contract Interpretation Manual.

The record established that USPS Area Managers were provided an explanation of the "20/1998" notation with the expectation that they would distribute the information to local and regional USPS managers

and supervisors. The record does not adequately reflect if or how such information was disseminated to the employees who received an otherwise unexplained amount folded into their regular paycheck with a “20/1998” notation or establish that the Postal Service adequately informed local Postmasters and other middle managers regarding the overpayments and their role in rectifying the situation. Consequently, these officials were ill-equipped to respond to inquiries from employees who were beset by collection activity more than a year after they had received a payout pursuant to the GSRA. Without having the information necessary to understand the context and scope of this dispute, local managers are not able to address and monitor recoupment efforts.

The record further established that some payees were entitled to grievance settlements other than the Global Settlement payment at issue in the instant case. The unavoidable conclusion is that such employees had no basis to verify independently what the funds they received in their regular paycheck represented or whether the amount accurately reflected a settlement payment to which they were entitled. More than a year later, the Employer initiated recoupment actions to collect overpayments without satisfying the contractually mandated notice requirements or the procedures established by Postal Service policy in the ELM.

At the arbitration hearing, the Employer stated that payees who received payments with the unexplained notation “20/1998” were

expected to seek further information in response to the demand letter by accessing the Union's website. Assuming that the Union website contained readily accessible information specifying what each individual payee should have been paid, and ignoring whether the Union had been unjustifiably placed in a position of responding to thousands of inaccurate payments, the obligation to notify payees of disbursement errors rested with the Employer. The record did not explain how the Employer reasonably believed that retirees and former employees would be alerted to check the Union website, how they might access this information, or why the Union should bear the sole burden of responding to inquiries necessitated by the Employer's negligence.

The Union began receiving inquiries immediately after the Global Settlement Remedy payments were distributed. The Union created a firewall-protected section on its website that employees could access to determine the correct amount of their individual entitlement pursuant to the Global Settlement Remedy disbursement list to which the parties had agreed.

As soon as such overpayments were discovered, the Union asked the Employer to send a letter to all payees who had received payments in excess of what they were owed, which ranged from \$26 to \$4000, in order to deter such employees from spending money that they would likely have to return. The Employer denied the Union's reasonable request. No valid reason was provided by the Employer, either at the

time the request was first made or at arbitration, for refusing to send out even a non-individualized form letter to the payees who had been overpaid. Such communication to Global Settlement beneficiaries who had been overpaid would have imposed a minimal burden on the Employer. This arbitrary denial of notice as contemplated by Article 28 is a key factor in determining whether or not the Employer must waive such overpayments.

The Employer treated these overpayments as actionable debts without explaining the nature of the alleged debt and offering a timely opportunity to return the money without penalty after explaining the nature and amount of the erroneous payment. By refusing to take this simple step, the Employer exacerbated the adverse situation confronted by those payees who were overpaid substantial sums but who had no basis to compute the correct amount they were owed under the Global Settlement Agreement and were thus unaware that they should not spend the payments. The recoupment procedures subsequently invoked by the Employer resulted in the imposition of avoidable assessment of penalties, interest, and other unwarranted fees by other government agencies such as the IRS or Social Security Administration.

Retirees and former employees who had separated from Postal Service employment before retirement received individual checks. However, these checks were not mailed directly to the retiree or former employees but were sent to the Postmaster at the last postal facility

where the employee had worked. Postmasters were expected to forward the checks to these retirees and former employees at their last known residence address of record. Even assuming a retiree has an obligation to keep the Postal Service Retirement System apprised of the employee's current address, there is no evidence that retirees are also required to advise the local Postmaster at their last work site when their post-retirement address of record changed.

The system for disbursement unilaterally imposed by the Employer was further complicated because of an intervening reorganization of several smaller post offices to create remotely supervised clusters under a regional Postmaster who might not have received the checks for retirees sent to the smaller post offices or known where the payee to whom the settlement check was addressed had last worked.

The record reflects multiple situations in which checks languished with Postmasters before being returned to the Payroll Accounting Service Center in Eagen, Minnesota. Consequently, many payees were not notified for a protracted interval of the Global Settlement payments they had been sent or that they had been overpaid.

The parties had agreed to hold back 20% of the \$56,000,000 Global Settlement pool for a second tranche of payments. Payees who had been overpaid were advised that the second round of payments, effectuated in March 2017, would first be applied to reduce any overpayments received by these payees. In many cases, however, the payments to employees

from the second tranche were insufficient to eradicate their overpayments in the first tranche. The vague language of the Employer's letter to employees (Union Exhibit 15) exacerbated the employees' confusion as to what they owed and why they owed it. The letter also failed to specify the appropriate USPS personnel to contact for more information regarding the Employer's demand for repayment.

During the arbitration hearings, the Union asserted that it still did not know the exact number of employees who owed outstanding overpayments. In its Fifteen-Day Position Statement, the Postal Service asserted that 1,125 employees were overpaid \$3,000,000. The OIG report issued six months earlier stated that the Postal Service had overpaid 1,391 duly entitled recipients in the amount of approximately \$3,400,000.

The Office of the USPS Inspector General characterized the errors in the payment process as follows:

These errors occurred due to inadequate or ineffective internal controls over how settlement payments are processed. Specifically, the procedural guidance is not comprehensive to help ensure processing of settlement are consistent and timely. Also, the procedural guidance does not address a reconciliation process to help ensure settlement payments are accurate and disbursed to appropriate employees.

As the Office of the Inspector General noted, these pervasive errors were caused by the Employer's sloppy execution of a large, but straightforward task not, as the Employer asserted, attributable to an internal technical computer malfunction of the type contemplated by the ELM to excuse the

Employer from waiving its right to effectuate recoupment of overpayments of wages.

Demand letters sent without input from or approval by the Union, which is a partner signatory to the Global Settlement Agreement, mischaracterized the overpayment as a “payroll related debt” rather than explaining that Global Settlement funds had been disbursed by the Employer in the wrong amount. The letter stated that “employees are held financially liable for the proper care and handling of US Postal Service’s funds”, thus erroneously implying that the payees were culpable for mishandling money for which they were responsible. The letter also stated that “Collection will be postponed until adjudicated through the appeal process.” This statement was patently false, as collection activity was not deferred after the national grievance was filed. Nor were collection efforts timely stayed until the grievance process is ultimately finalized through this arbitration proceeding.

The Employer’s Demand Letter also created a misleading impression that filing an individual grievance was the only avenue of redress that an overpaid payee could pursue to contest the Employer’s repayment demand. However, there were other valid avenues of redress, including seeking waivers available pursuant to Employee and Labor Relations Manual Section 437.6, that were omitted.

The Union cited two arbitration decisions by regional arbitrators and a third decision by Arbitrator Andrew Strongin in which employee debts were waived because of substantial defects in the process the USPS employed to collect these debts. Although the recoupment sought in the instant case was not of a payroll-related debt, such pervasive defects in the debt collection process in the instant case are also germane.

Bargaining unit employees can reasonably be expected to approximate their expected regular straight time and overtime earnings in a particular pay period and may discern accidental underpayments or overpayments of wages. Thus, they should anticipate recoupment of overpayments in subsequent pay periods. None of these reasonable expectations applied in the instant case as payees who were overpaid had no reliable way of identifying what the extra monies they received represented or that the amounts they received were not accurate.

As soon as the first tranche of payments was disbursed and reports of erroneous payments were received by the Union, the Employer had the ability to identify who had been overpaid and the sole obligation to alert payees immediately of their liability for repayment of excess funds. The Employer's arbitrary delay in alerting payees that errors had been made cannot be ignored, as the Employer is solely responsible for the adverse impact caused by its protracted delay in providing adequate notice.

The manner in which the Employer implemented its efforts to recoup overpayments compounded this delay. There was no reasonable basis immediately not to provide requisite notice regarding the basis of the overpayment and the alternative procedures available to payees. Nor was there valid justification not to stay all collection efforts after the instant grievance had been filed, as expressively required by Article 28.

The Union submitted evidence describing instances where retirees' Social Security benefits were garnished by the Treasury Department. Such deductions occurred despite the fact that employees were among the group of aggrieved employees covered by the Article 28 grievance. Other payees whose tax refunds, Social Security benefits, and other government payments were attached after the Global Settlement overpayments were made also suffered substantial additional financial injury from the Employer's intentional inaction in clearly communicating the details of the overpayment with a timely warning not to spend the overpayment.

The Employer ignored the pendency of the instant grievance, flouted unambiguous language in Article 28 requiring a stay of collection activity once a grievance has been filed, prematurely implemented collection, and used techniques suitable for employees who refused to cooperate after they received a full explanation and been afforded ample opportunity to repay their overpayments. These circumstances

constituted a material failure of due process that must be considered in assessing the Union's request for a waiver of repayment.

An arbitration award issued by Arbitrator Daniel Collins (Union Exhibit 19) applied the ELM 437 process to correct overpayments when an error occurred regarding pay increases following an interest arbitration award. As in the instant case, there was "no mechanical or typographical error", the employees were not at fault, and the "best interests of the Postal Service would be served by fair and forthright dealing with its employees." In reaching his decision to grant waivers, Arbitrator Collins relied on the substantial delay before employees were advised that the retroactive payments they received pursuant to the interest arbitration award had been overpaid.

The enigmatic "20/1998" notation on paychecks or paystubs of active employees or in directives advising payees how to contact Postal Service management for more information or to repay the overpayments did not provide a meaningful basis for employees to protect themselves from debt recoupment or additional fees. As Arbitrator Shyam Das held in APWU and USPS, Case QO6C-4Q-C 11182451 (2016), the Postal Service's wholesale and repeated violations by not providing contractually mandated notices--such as valid letters of demand in the instant case--failed to satisfy the terms of Article 28, the JCIM and the ELM and other applicable Postal Regulation handbooks. A similar analysis and conclusion govern the instant case.

The Union has requested that the Arbitrator apply the provisions of ELM Section 437 rather than remand to the Employer the determination of individual waiver requests because the management officials at the Accounting Service Center in Eagan, Minnesota or the Regional Finance Managers who would decide individual employee's requests for a waiver have already decided not to grant such waivers at the first level of review. Thus, the Union asserted, no useful purpose would be served by sending individual waiver requests either to Regional Finance Managers or to the Accounting Service Center in Eagan, Minnesota.

The appropriate forum for addressing what has been a uniform national response to recouping overpayments should be arbitration at the national level. The administrative errors cited by the Office of the Inspector General and demonstrated by the Union in the instant arbitration did not occur at various locations throughout the country. Although the Global Settlement payees are situated all over the United States, the Employer's disbursement errors and subsequent contractual violations occurred centrally with nation-wide consequences. The substantial repercussions from these violations mandate fashioning an appropriate remedy.

ELM Section 437.6 contains three conditions for waiver of employee debt. The first criterion is administrative error that is not attributable to a clerical or typographical error that could not be discerned and prevented by the Employer. More specifically, ELM

Section 437.6 provides, “Excluded from consideration for waiver of collection or overpayments resulting from errors in time keeping, key punching, machine processing of timecards or time credit, coding, and any typographical errors that are adjusted routinely in the process of current operations.” The Employer has not established these criteria in the instant case.

The Employer was provided with an accurate list of Global Settlement payouts to 13,000 employees. A substantial percentage of the settlement payments, perhaps as many as forty per cent according to credible testimony, were incorrect. Although the Employer corrected underpayments and non-payments, which errors fall outside the scope of the instant case, the Employer has not demonstrated that the more than 1300 overpayments were attributable to any computer related malfunction. As the OIG credibly concluded, these errors resulted from pervasive sloppiness in effectuating distribution of the first tranche of the Global Settlement funds by methodically following the list of payees and amounts prepared by the Union and accepted as accurate by the Postal Service.

The second criterion is that a waiver recipient must have acted in good faith and not be responsible for the debt. ELM 437.6 provides that, “Everyone having an interest in obtaining a waiver acted reasonably under the circumstances, without any indication of fraud, misrepresentation, fault, or lack of good faith.” It is self-evident that

employees, retirees, and former employees who were overpaid were in no way negligent or culpable for receiving the overpayment. Nor has the Employer established that payees should have interpreted the “20/1998” notation as indicating a Global Settlement Agreement payment and recognized that the amount added their paycheck or sent independently was too large. Absent persuasive evidence to the contrary, aggrieved employees must be deemed to have acted in good faith.

The third criterion mandated by the ELM is that “Collection of the claim would be against equity and good conscience and would not be in the best interest of the Postal Service.” On multiple occasions commencing almost immediately after the first tranche of \$44,000,000 was distributed in 2016, the Union asked the Postal Service to provide instructive advice to Postmasters and middle management regarding Global Settlement overpayments and to promulgate a letter to current employees, retirees, and former employee payees advising them that they had been overpaid and not to spend the funds.

The Postal Service’s refusal to provide such information, coupled with the arbitrary and avoidable protracted delay lasting more than a year in advising employees that they would be obligated to repay and how much, cannot reasonably be accepted as satisfying the standard of equitable conduct mandated by the ELM as a prerequisite for refusing a waiver request. Moreover, the Employer’s flouting of the provisions of Article 28 by initiating and pursuing collection after the instant National

Grievance was filed cannot be construed as complying with the covenant of good faith dealing underlying the parties' collective bargaining agreement.

The attachment and seizure of tax refunds, retirement payments, and Social Security benefits after the instant grievance was filed not only violated the collective bargaining agreement, but also constituted recoupment without due process. These violations of unambiguous proscriptions in Article 28 and in the ELM mandate a conclusion that "Collection of the claim would be against equity and good conscience...".

Multiple interests of the Postal Service as an employer and as a public entity worthy of trust and respect must be weighed to determine whether the long term interests of the Postal Service would be better served by pursuing collection of or by completely or partially waiving outstanding Global Settlement overpayments. The Postal Service employs a huge work force, a substantial percentage of whom are represented by the APWU. The Employer and its partner unions have a legal obligation to bargain, and thereafter to fulfill the fruits of their bargain, in good faith. Just as the Postal Service is entitled to rely unequivocally on the honesty and integrity of its employees, Postal Service employees are entitled to rely on good faith application of the collective bargaining agreement and applicable statutes and regulations governing their employment.

The clear and unambiguous language of Article 28 and applicable sections of the ELM cited above mandated certain parameters of proper collection activity. The Postal Service violated these clear mandates in the instant case by the methods and timing of its debt collection efforts. Although granting a full or partial waiver may not initially appear to be in the best short-term financial interest of the Postal Service, a broader purview is necessary to determine whether the uncollected overpayments that were solely and exclusively caused by Postal Service negligence and compounded by non-feasance regarding notice, explanation, and recoupment should be forgiven through the waiver process.

If the Postal Service had complied with manifestly reasonable demands by the Union to advise bargaining unit employees and their supervisors on a timely basis about the source and extent of the overpayments and promptly to implement reasonable procedures to repay the overpayments, payees would have been alerted to avert potential liability, especially for fees and penalties, by retaining any overpayment until the matter was clarified and resolved. The Employer blithely ignored its obligations and rejected the Union's entreaties to communicate with overpaid payees.

The \$56,000,000 in Global Settlement payouts were not a windfall for payees. They represent lost earnings for bargaining unit Clerks because supervisors performed bargaining unit work that otherwise would have been performed by Clerks, either with straight time or

overtime rates. The terms of the settlement represent the parties' compromise on how to reimburse employees for lost earnings in amounts ranging from \$26 to approximately \$4,000.

The Employer had the obligation to distribute this \$56,000,000 correctly. The Employer's failure to implement this distribution competently can be inferred not only from the 1,300 instances of payees who were overpaid approximately \$3,400,000, but also from the thousands of other employees, retirees, or former employees who were underpaid or not paid at all when the first tranche of \$44,000,000 was distributed.

Even if the employees who were overpaid amounts in their regular paychecks that were unusually large should have realized that an error had likely occurred, these payees were not provided timely notice of an error and provided accurate and useful information regarding a clear avenue of inquiry or available processes to seek redress from the Postal Service. Payees were entitled to seek due process armed with information about the source and extent of their liability to return overpayments, preferably before they had spent the money.

Employees who received relatively small overpayments would suffer no substantial detriment in having the overpayment withheld in small increments. However, retirees were entitled to protest the reduction of Social Security or pension benefits without due process. They should not have been forced to endure a bureaucratic gantlet or to be exposed to

substantial fees in addition to the amount of the Employer's overpayment.

By mischaracterizing the recoupment of overpayments of Global Settlement funds as a payroll related debt, the Employer erroneously redefined the collection process. By not alerting payees for more than a year to the correct amount they were owed and not advising them to isolate funds they had been overpaid, the Employer tainted the recoupment process. Therefore, the facts and circumstances established by the evidentiary record of the instant case portrayed a clear violation of Article 28 of the collective bargaining agreement and applicable provisions of the ELM governing recoupment of overpayments.

Although all payees were entitled to their Global Settlement payments and to contractual due process, they were not necessarily entitled to keep the full amount of the overpayments they received. Therefore, granting waivers for all overpayments is not justified. However, the manner in which the Employer undertook recoupment cannot be condoned.

Given the Postal Service's duty as a public entity to protect its resources for the public benefit and assuming that procedural infirmities are rectified and all penalties, interest, and fees are returned to all payees, reasonable limited recovery of overpayments is appropriate. Balancing the parties' legitimate interests and the necessary deterrence of future flouting of the parties' negotiated agreements and applicable

statutes, Postal Service regulations, and procedures, the undersigned Arbitrator issues the following:

AWARD OF ARBITRATOR

The undersigned Arbitrator, having been designated in accordance with the arbitration agreement entered into by the above-named parties, and having been duly sworn, and having duly heard the proofs and allegations of the parties, AWARDS as follows:

Based on the evidence submitted, the Postal Service violated the National Agreement in its handling of the payment errors under the Global Settlement Remedy Agreement. The following remedy regarding these violations is hereby ORDERED:

(1) The Postal Service shall forthwith issue a written explanatory statement to all employees, retirees, and former employees whom the Employer alleges were overpaid, including payees who voluntarily repaid overpayments or against whom the Employer has taken collection action regarding the overpayments. The Union shall have an opportunity to vet the statement before it is distributed. If the Union desires to be a co-signatory, the statement shall be signed jointly by the Employer and the Union.

The Arbitrator specifically retains jurisdiction to resolve any dispute regarding the wording of this written communication to bargaining unit employees, retirees, and other payees or regarding how the letter shall be distributed.

(2) All surcharges, penalties, interest, and fees incurred beyond the level of any overpayment under the Global Settlement Memorandum of Understanding or the Global Settlement Remedy Agreement that arose from collection efforts to recoup such overpayments shall be forgiven and, if already paid to any entity, shall be repaid by the Postal Service to any payees who were charged such surcharges, penalties, interest, and fees by the Postal Service or by any other entity through whom overpayment recoupment was effectuated.

(3) Amounts overpaid to retirees and former employees are hereby waived.

(4) The Employer shall, after consultation with the Union regarding the accuracy of its computation, send an individual notice to each current employee whom the Employer alleges was overpaid setting forth the cause of the overpayment, the size of the disbursement originally due to the payee under the Global Settlement, the amount of the overpayment received by the payee, and any remaining unpaid balance sought by the Employer. Retirees and former employees shall receive a similar letter describing the size of the disbursement originally due to the payee under the Global Settlement, the amount of the overpayment received by the payee, and the waiver of the balance.

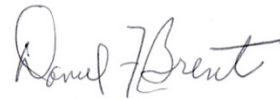
(5). Thirty days after such proper notice of intent to collect an overpayment has been provided to each current employee and to the Union, and after any other applicable contractual, Postal Service policy,

or statutory procedural requirements have been satisfied, the Employer may commence recoupment of such overpayments by deducting not more than \$20 per week from the gross amount that is earned each pay period until (1) the debt is paid in full if the overpayment was less than \$800 or (2) if the overpayment was \$800 or more until fifty-percent of the overpayment has been recovered, with a minimum recovery of \$800.

(6). The Employer shall contact the Internal Revenue Service, the Treasury Department, the Social Security Administration and any other governmental entity, credit bureau or credit granting institution previously notified of the alleged debt to the Postal Service arising from the overpayments of the Global Settlement Remedy Agreement and shall undertake whatever action is necessary to cause such agencies or entities to purge from their records any adverse information concerning any payee against whom the Employer previously initiated any debt collection action to recoup any Global Settlement overpayment. More particularly, the Employer shall make all reasonable efforts to assure that any payee who was subject to attachment by the IRS or any other similar adverse action by any government agency shall have that action deleted from the records of that institution regarding that payee.

(7) Such action as the Arbitrator may hereafter order upon application of either party to this dispute or as may be necessary to achieve the results set forth above.

The Arbitrator also hereby retains jurisdiction to amend or correct this Award and to resolve any dispute that may arise regarding the implementation or computation of the remedies ordered pursuant to this Award.



, 2023

Daniel F. Brent, Arbitrator

Q10C-4Q-C 10670819
(Global Settlement Remedy Agreement Grievance)
Award Note

The above listed award was received from the arbitrator with an incomplete date. The Parties acknowledge that the award was received on March 2, 2023.

Jennifer S. Breslin Date 3/14/2025

Jennifer Breslin

Director

Collective Bargaining and Arbitration

United States Postal Service

Charlie Cash Date 3-14-25

Charlie Cash

Director

Industrial Relations

American Postal Workers Union, AFL-CIO