

STAYS IN COLLECTION

Article 28 of the 1990 Collective Bargaining Agreement provided for a postponement of the collection of certain debts under that Article, saying at Section 4.A, that:

A. If the employee grieves a demand in the amount of more than \$200 which is made pursuant to Section 1, 2 or 3, the Employer agrees to delay collection of the monies demanded until disposition of the grievance has been had either by settlement with the Union or through the grievance-arbitration procedure.

Sections 1, 2 and 3 of Article 28, as referred to in Section 4.A apply specifically to: 1) *Shortages in Fixed Credits*, 2) *Loss or Damage of the Mails*, and 3) *Damage to USPS Property and Vehicles*. There has been considerable arbitral debate about whether the Article 28.4.A delay in collection procedures for debts over \$200 was limited to only those types of debts enumerated in Sections 1, 2 and 3 or whether it properly applied to other the Article 28 debts covered by the significantly more general preamble to Article 28, "any money demand upon an employee for any reason," as well. The better reasoned awards found a general applicability of the Article 28 delay to all demands in excess of \$200.00. A typical case in point might well be a Western Region award by Arbitrator Snow:

Arbitrator Carlton J. Snow, W1C-5F-C 9030, Denver, Colorado, October 25, 1984.

Grievant had erroneously received level 6 pay instead of level 5 pay. A letter of demand for \$1522.52 was issued and the Employer began deductions from the grievant's paycheck. The employee initiated this grievance, requesting waiver of the claim. The arbitrator concluded that

"[I]t is reasonable to conclude that the parties intended to apply the procedures set forth in Section 4 to the preamble of Article 28, and such an interpretation permits Article 28 to be understood in a harmonious way.

. . .

"Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Employer violated Article 28 of the parties' collective bargaining agreement by withholding

the claim for overcompensation from the grievant's paychecks as well as Article 19 of the parties' collective bargaining agreement when it denied the grievant's request for a waiver. The Employer is required to refund the grievant any and all wages withheld from his paychecks with regard to the Employer's claim for an erroneous overpayment. The Employer shall also grant the grievant a waiver of its claim for overcompensation..."¹

The parties themselves, put an end to all arbitral debate regarding the scope of the Article 28.4.A stay in collections, however, by agreeing in 1994 to a Memorandum of Understanding which stayed collection of all debts "regardless of the amount and type" until after completion of the grievance-arbitration procedure. The Memorandum provided at paragraph 6:

"6) If a grievance is initiated and advanced through the grievance-arbitration procedure...regardless of the amount and type of the debt, collection of the debt will be delayed until disposition of the grievance...has (have) been had., either through settlement or exhaustion of contractual and/or administrative remedies."

This Memorandum of Understanding not only extended the stay in collection to all types of debts, it also made the stay applicable to all debts "regardless of the amount." Collection on a Letter of Demand for a debt of any type or any amount was no longer appropriate while a grievance was pending. The MOU provided for implementation of appropriate postal regulations and on July 6, 1995 the Employer finally published changes to the Employee & Labor Relations Manual in Postal Bulletin 21897. At Part 462.41 of the ELM, the Employer now provided:

"462.41 Stay of Collection of Debt

Whenever a grievance concerning any letter of demand has been initiated in time, in accordance with Article 15 of the applicable collective bargaining agreement...regardless of the type and amount of the debt, the Postal Service will stay the collection of the debt until after disposition of the grievance...through settlement or exhaustion of the contractual and/or administrative remedies."

¹Attachment #1. *Arbitrator Carlton J. Snow, W1C-5F-C 9030, Denver, Colorado, October 25, 1984, pp. 9-14.*

While the parties initially were in dispute as to whether the stay in collection proceedings language took effect at signing of the MOU or upon adoption of the regulations which were to be promulgated as a result of the agreement, that issue was finally resolved through a 1997 National level award.

Arbitrator Carlton J. Snow, J90N-4J-C 95023345, National Award, May 9, 1997.

In this National level award, Arbitrator Snow considered the case of a bargaining unit employee from whom the Employer withheld \$119.50 after a grievance was initiated on a letter of demand. The letter of demand and collection occurred in November 1994 or shortly thereafter. The Arbitrator noted that paragraph 6 of the 1994 MOU was the "focal point of the dispute before the arbitrator," and that the issue boiled down to determining the effective date of paragraph 6 of the 1994 MOU. The Arbitrator's conclusion:

"Accordingly, it is reasonable to conclude that the language of Paragraph 6 providing for a stay of debt collection was effective immediately on execution of the Memorandum of Understanding."

As a result of that finding, the Arbitrator then concluded that collection of the debt after the grievance was initiated violated the Agreement and ordered the Employer to "immediately...reimburse this amount to the grievant."²

Beginning with the 1994 Collective Bargaining Agreement, Article 28, Section 4 was amended to contain identical language:

"A. If a grievance is initiated and advanced through the grievance-arbitration procedure...regardless of the amount and type of the debt, collection of the debt will be delayed until disposition of the grievance...has (have) been had., either through settlement or exhaustion of contractual and/or administrative remedies."

It is by now very clear that for any type of Letter of Demand and for any amount, if a timely grievance is filed, the Employer may not begin the collection process until that grievance is either resolved or adjudicated. Regional Arbitrators consistently find that attempting to collect on a Letter of Demand, while a grievance is still pending is a violation of the Agreement and results in negation of the Letter of Demand.

²Attachment #2. *Arbitrator Carlton J. Snow, J90N-4J-C 95023345, National Level, May 9, 1997.*

Arbitrator Christopher E. Miles, E7C-2U-C 20569, et al, Stafford, Virginia, May 11, 1993

Three (3) different grievants had received Letters of Demand in the amounts of \$848.10, \$156.73 and \$201.84. Finding that the Letters of Demand were procedurally defective because they failed to specify available options for repayment, the Arbitrator also discussed the effect of the Employer's demand for immediate repayment contained in all three (3) Letters of Demand, saying:

"In addition, the Letters of Demand mandate that said shortages be paid immediately. This latter point is in conflict with Section 4(A) of Article 28, which mandates that if an employee grieves a demand...the Postal Service agrees to delay collection of the monies demanded until disposition of the grievance. Thus, although the Letters of Demand in question notified the grievants of their appeal rights as contained in Article 15 of the Agreement, said Letters of Demand remain procedurally defective in violation of Article 28 of the Agreement... Therefore, it is my considered opinion that the Union has properly advanced its procedural argument. In view of the above, it is my determination that the grievances filed in this matter shall be sustained. The Letters of Demand shall be rescinded and the grievants shall be made whole for any monies collected in connection with the Letters of Demand."³

Arbitrator Elliot Newman, C90C-1C-C 97016699, Pittsburgh BMC, Pennsylvania, September 16, 1997

Because of an administrative error the Employer enrolled grievant in the Civil Service Retirement System instead of the Federal Employees Retirement System when she was hired. Two (2) years later the Employer corrected the error retroactively and issued grievant a Letter of Demand for the difference. One (1) month after the grievance was filed the Employer began to deduct \$75.00 per pay period from the grievant's earnings in order to satisfy the debt. The Arbitrator said:

"On the merits, Article 28 states that if a 'grievance is initiated and advanced through the grievance-arbitration procedure..., regardless of the amount and type of debt, collection of the debt will be delayed' (emphasis supplied [by Arbitrator]) until the grievance is disposed of favorably to the Service either through settlement or exhaustion of the contractual remedies. Article 28 is all inclusive, and does not differentiate between debts owed the Service directly as for fixed /flexible credits, and debts owed FERS by employees for social security payments. In both cases, employees who file grievances are entitled to have their

³Attachment #3. *Arbitrator Christopher E. Miles, E7C-2U-C 20569 et al, Stafford, Virginia, May 11, 1993, pp. 15-16.*

alleged debt held in abeyance pending adjudication or settlement of their grievances.”⁴

Arbitrator Ralph E. Pehlan, G94C-4G-C 96047571, Mandeville, Louisiana, December 17, 1997

Grievant was over credited forty-four (44) hours of annual leave as the result of an administrative error. Grievant was issued a Letter of Demand for \$597.63 based upon the USPS Invoice and Statement. Subsequent to the filing of the grievance, grievant was called into the Postmaster's office and advised that the USPS wanted him to start making payments. He signed a PS Form 3239, *Payroll Deduction Authorization*, agreeing to pay the money back through payroll deduction. The Arbitrator said:

“Clearly, in the opinion of the Arbitrator, based upon the evidence in the record, the Postmaster acted improperly and contrary to the terms of the National Agreement when he made an effort to get (perhaps pressure) the Grievant into agreeing to sign a Payroll Deduction Authorization Form at a time when he knew, or clearly should have known, that the Grievant was not required and had the right not to begin to pay the USPS the \$597.63 until his grievance was settled/ adjudicated.

“...At any rate the evidence has persuasively established that a grievance had been filed by Mr. Poissant and was proceeding through the steps of the grievance procedure prior to Postmaster Palisi undertaking his efforts to get Mr. Poissant to start paying back the debt and sign the Payroll Deduction Authorization to Liquidate Postal Service Indebtedness Form. The Postmaster's actions were premature, improper and contrary to the Grievant's due process rights granted him under the terms of the National Agreement as well as that set out in Sections 462.5 and 462.41 of the Postal Bulletin on the Collection of Postal Debts From Bargaining Unit Employees (Joint Exhibit #3) in that the applicable procedural requirements had not been followed and the USPS did not stay the collection of the debt until after the disposition of the grievance and/or the petition, through settlement or exhaustion of the contractual and/or administrative remedies.”⁵

⁴Attachment #4. *Arbitrator Elliot Newman, C90C-1C-C 97017699, Pittsburgh BMC, Pennsylvania, September 2, 1997, p. 8.*

⁵Attachment #5. *Arbitrator Ralph E. Pelhan, G94C-4G-C 96047571, Mandeville, Louisiana, December 17, 1991, pp. 7-8.*

Arbitrator John C. Fletcher, I90C-1I-C 95029585, Bismarck, North Dakota, May 7, 1999

This was a class action grievance on behalf of ten (10) bargaining unit employees who were issued Letters of Demand after being erroneously paid Sunday Premium over a span of about six (6) months. Management collected on the Letters of Demand while the grievance was being processed. The Arbitrator said:

“...[T]he parties have now agreed that ‘regardless of the amount and type of the debt,’ collection will be delayed until the grievance is disposed of. That was not done in this case, even though APWU urged that it be delayed when the grievance was handled at Step 1 and also on appeal to Step 2.”⁶

Arbitrator John Remington, I98C-1I-C 9928104, Minneapolis, Minnesota, June 12, 2000

Grievant received a Letter of Demand in the amount of \$2077.32 after a salary overpayment resulting from an incorrect step placement was discovered. Subsequent to the filing of the grievance, the Accounting Service Center sent grievant monthly Statements showing the account as “past due” and indicating that such accounts are “subject to collection agency and/or Internal Revenue Service referral.” The Union argued that these collection efforts violated Article 28.4.A. The Arbitrator said:

“Brief comment is warranted regarding the Union’s contention that the Employer violated the provisions of Article 28 of the National Agreement with respect to the course of conduct that it followed in attempting to collect the claimed debt. While the Employer is certainly entitled, indeed obligated, to attempt to recover overpayments, the National Agreement specifically provides that 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 is had, either through settlement or exhaustion of contractual and/or administrative remedies. Based on the record of the hearing, there can be no doubt that the Employer egregiously violated these provisions with respect to its claim against Grievant.”⁷ [emphasis added]

⁶Attachment #6. *Arbitrator John C. Fletcher, I90C-1I-C 95029585, Bismarck, North Dakota, May 7, 1999, p.11.*

⁷Attachment #7. *Arbitrator John Remington, I98C-1I-C 9928104, Minneapolis, Minnesota, June 12, 2000, p. 12.*