

MIDWEST EXPEDITED ARBITRATION PANEL

In the Matter of Arbitration  
Between

UNITED STATES POSTAL SERVICE

and

AMERICAN POSTAL WORKERS UNION,

Post Office: Des Moines, IA

Case No: I98C-11-C 99259520

Grievant: P. Schulte

**BEFORE:** Sharon K. Imes

**APPEARANCES:**

**For the Service:** Marcia G. Grant, Labor Relations Specialist, Hawkeye District, United States Postal Service, Des Moines, IA.

**For the Union:** Robert D. Kessler, National Business Agent, St. Louis Region, Clerk Division, American Postal Workers Union, Kansas City, MO 64131.

**PLACE OF HEARING:** Des Moines, IA

**DATE OF HEARING:** June 15, 2000

**DATE OF AWARD:** June 19, 2000

**RELEVANT CONTRACT PROVISIONS:** Articles 3, 9, 15, 19, 28; ELM 437

**CONTRACT YEAR:** November 21, 1998 - November 20, 2000

**TYPE OF GRIEVANCE:** Contract Violation

**AWARD SUMMARY:**

While it is clear the Grievant received monies that she did not earn and that, generally, this act would constitute unjust enrichment, it is also clear the Grievant was disadvantaged financially since not only did she pay taxes on the overpayments over a period of four years, a fact not considered by the Service in its Letter of Demand, and, further, since the Service failed to take into account the length of time during which this error occurred and to make adjustments for the manner in which any collection of the claim would take place. When these factors are

considered it is concluded that the claim for collection goes "against equity" and "the best interest" of the Postal Service.

By: Sharon K. Imes  
Sharon K. Imes, Arbitrator

***THE ISSUE:***

Did the Service violate the National Agreement when it issued the July 7, 1999 letter of demand for \$919.83 to the Grievant? If so, what is the remedy?

***STATEMENT OF THE CASE:***

The Grievant, a Flat Sorter Clerk, has been employed by the Postal Service since October 1985. In 1993, the Grievant was promoted from a Level 5 to a Level 6; returned to a Level 5 and was repromoted to a Level 6. When she was repromoted an administrative error was made and she was moved from a Level 5, Step H to a Level 6, Step H. The error was discovered by management in late 1997.

On June 7, 1999, the Grievant received a Letter of Demand stating that due to this error, the Grievant had been overpaid \$919.83. In that letter the Grievant was advised that if she did not pay it back in a lump sum she could opt to have 15% of her disposable pay deducted (and interest on all debt greater than 30 days old) until the amount was paid. She was also advised that she could grieve the Letter of Demand.

This matter was grieved on June 18. In the grievance, the Union and the Grievant asked that the grievance be held in abeyance until the Grievant's Request for Waiver of Claim for Erroneous Payment had been fully adjudicated. The Grievant filed a Request for Waiver of Claim for Erroneous Payment on July 8. When the waiver, referencing the filing of a grievance, was filed the Lead Plant Manager who received the request for wavier notified the Grievant that he had no record of a grievance being filed and that nothing on the issue could be done until that time. Consequently, on July 15, the Union Steward sent the Lead Plant Manager a memo indicating that the grievance had been filed on June 18 and that it had been denied at Step 1 that same date; that he had personally made copies of the grievance and placed them in the Manager's designed holdout and to Accounting and Finance. The Steward also advised the Manager that he

had also sent correspondence to the Manager's office to advise the Manager that a grievance would be filed. There is no record that this waiver request was ever considered. In the meantime, however, the grievance continued through the grievance process and was also denied at Steps 2 and 3. At both Steps 2 and 3, management denied the grievance stating that the Grievant should have been aware of the overpayment and that she had the responsibility to report it to management.

***POSITIONS OF THE PARTIES:***

The Union argues that the Grievant should not have to reimburse the Service for the overpayment since the three criteria cited under Section 437.6 of the ELM have been met. Continuing, it states that there is no dispute over whether the overpayment was the result of an administrative error and that while the Step 3 management response stated the Grievant had not acted in good faith, the Service does not now assert that the Grievant did not act in good faith and, in fact, agrees it would have been difficult for the Grievant to have discovered the overpayment. Further, it maintains that requiring the Grievant to reimburse the Service for the overpayment would be a collection against equity particularly since more than four years passed before the error was discovered. The Union also maintains that since the Grievant's Request for Waiver of Claim for Erroneous Payment was never adjudicated, the Grievant was denied due process and that fact alone should be cause to rescind the Letter of Demand.

The Service argues, however, that since the Grievant was paid for time she did not work she is obligated to return the overpayment, therefore the Service did not violate the National Agreement when it issued the Letter of Demand. Further, it rejects the Union's argument that all three conditions in Section 437.6 of the ELM have been met declaring that the Grievant has been unjustly enriched and, therefore, failure to be reimbursed would go against equity and the best interest of the Service. It also states that it believes the Union's argument that the Grievant was denied due process is a new argument and should not be considered not only because it is new but also because it is not at issue in this dispute.

***DISCUSSION:***

Although the Union argues that the Service's failure to adjudicate the Request for Waiver of Claim for Erroneous Payment of Pay denies the Grievant due process, that argument is not

considered in this dispute since such failure on the Service's part should be the subject of a grievance separate from one that challenges whether a Letter of Demand should be rescinded. Consequently, the outcome of this dispute will rest solely upon a finding as to whether the Union has shown that the error was an administrative error; that the Grievant acted reasonably under the circumstances, without any indication of fraud, misrepresentation, fault, or lack of good faith, and that the collection of the claim would be "against equity and good conscience" and would not be in the "best interest" of the Postal Service.<sup>1</sup>

In support of their respect positions and to give guidance to the Arbitrator, the Union submitted nine arbitration decisions and the Service submitted fifteen decisions all concerning similar incidents. In almost all of these cases, the decision was based upon the arbitrator's view of whether or not collection of the overpayment would be against equity as defined in paragraph (c) of Section 437.6 of the ELM. The same is true in this dispute since the parties do not dispute that the overpayment resulted from an administrative error and since there is no indication of fraud, misrepresentation, fault or lack of faith on the part of the Grievant.

In those cases where the grievance was denied the arbitrators generally applied the principle that a person cannot retain monies that do not belong to them and concluded that returning the money would simply put the grievant in the same financial position he or she would have been absent the Postal Service's error.<sup>2</sup> In those cases where the grievance was sustained, it was usually concluded that collecting the claim went against equity and good conscience when the error was difficult to discern by either management or the employee or when the error occurred over a number of years. In two cases, those decided by Arbitrator Snow, it was concluded based upon insight he had gained from an earlier version of the Employee and Labor Relations Manual that the collection of a claim would be "against equity and good conscience" or would not be "in the best interest" of the Postal Service when it has been determined that not only was the error an administrative one but when there is no indication of fraud, misrepresentation, fault or lack of good faith on the employee's part.

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<sup>1</sup> These three criteria are set forth in Section 437.6 of the ELM and are intended for use by the Minneapolis Accounting Center in determining whether to waive a claim for erroneous overpayment. Nonetheless, these three criteria also set the standard of review for determining whether there is merit in a Letter of Demand seeking reimbursement of the same claim.

<sup>2</sup> In certain cases, the arbitrator also found that the employee's failure to notify the Service of overpayment or the short duration of time between the error and its discovery also affected a finding against the grievant.

This Arbitrator is of the opinion that although an earlier provision of the Employee an Labor Relations Manual did indicate that “generally” meeting the first two criteria in Section 437.6 is cause to find “against equity and good conscience”, an automatic finding to that effect upon evidence that the first two criteria were met ignores the fact that there are three criteria in this provision and that each deserves consideration. There is merit, however, in the conclusion by some arbitrators that a lengthy delay of time between when the administrative error occurred and when it was discovered, provided that the employee acted reasonably, is a factor to be considered in determining whether the collection of a claim goes against equity.

In this dispute, the fact that an administrative error caused the Grievant to be overpaid for four years and the fact that the parties agree the Grievant was not likely to have found the error just as it was difficult for management to find the error are relevant factors in determining whether the collection of this claim would go against equity. While other arbitrators have concluded that an approximate two-year delay in finding the error did not cause that employee any financial harm, there is no evidence that they or the Service took into account the fact that employees subjected to such errors were required to pay taxes on that overpayment. To this extent, even if amended returns are filed, employees subject to such errors do suffer some financial harm. In this instance, the Grievant was overpaid for four years and paid taxes on this overpayment for the same period of time.

Also relevant to this dispute is that it the Letter of Demand now seeks repayment of the overage in increments of nearly \$138 per pay period when the Grievant received the overpayment in increments of approximately \$9 per pay period and that the Grievant, if she elects payroll deduction, will be charged interest on any part of the debt that has not been repaid within 30 days of a finding that she must repay the overpayment.<sup>3</sup> This puts the Grievant at a distinct financial disadvantage since the evidence establishes that she knew nothing of the overpayment. It is, in essence, the same as granting her a loan she did not ask for and then expecting her to not only repay it but to repay it quickly and to pay interest on it as well.

While it is clear the Grievant received monies that she did not earn and that, generally, this act would constitute unjust enrichment, it is also clear the Grievant was disadvantaged

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<sup>3</sup> The Service stated that it was not requiring the Grievant to pay interest, however, Joint Exhibit 3 indicates that interest will be charged on all debts greater than 30 days old and no evidence was introduced into the record that indicated no interest would be charged.

financially since not only did she pay taxes on the overpayments over a period of four years, a fact not considered by the Service in its Letter of Demand, and since the Service failed to take into account the length of time during which this error occurred and to make adjustments for the manner in which any collection of the claim would take place. When these factors are considered it is concluded that the claim for collection goes "against equity" and "the best interest" of the Postal Service.

Based upon the above findings, the award is as follows:

***AWARD:***

The grievance is sustained. The Service is ordered to rescind the Letter of Demand.

June 19, 2000

SKI:ms