What should the remedy be?

Lew Drass

Both parties have always been opposed to being held accountable for postal contract violations. Management does not like to pay monetary remedies or give out administrative leave, and letter carriers do not like to get disciplined. Repetitive contract violations generate higher accountability expectations from the harmed party. Again, neither party likes this situation when they find themselves on the receiving end of a higher accountability request in the grievance procedure, but that is our system, and it always has been.

For decades, the Postal Service has tried to create arguments to escape or at least minimize its accountability for contract violations. They used to argue that monetary remedies for issues such as improper route adjustments or administrative leave for improperly forced overtime created an unjust enrichment for letter carriers and were therefore improper. This argument did not play well before most arbitrators and eventually seemed to fade off into the sunset.

Somewhere during the life of the 2016-2019 Collective Bargaining Agreement (CBA), USPS declared an all-out war on remedies in the grievance procedure. It rebranded its term for the situations described above as punitive remedies. It began arguing that almost every remedy request made by the union was a punitive remedy request, a request that is not only improper but also illegal.

In nearly every case, management claims that the Postal Service is part of the federal government, and therefore falls under the doctrine of sovereign immunity, which prohibits it from being subject to punitive awards. Additionally, management argues arbitrators lack the authority to grant punitive remedies in the arbitration forum.

What management has really been saying is that USPS has a forcefield around it that prevents all of those pesky remedy monsters from getting in. Management has come to believe that it can violate the contract as many times as it pleases without suffering any consequences. USPS decided to test its ridiculous arguments in federal court.

District Court Judge Tanya S. Chutkan issued her ruling on July 26. This decision (M-01967) can be viewed in its entirety in the Material Reference System. Judge Chutkan summed up the case:

> So there are two questions that I need to address in this case. The first is whether the doctrine of sovereign immunity shields the USPS from liability for punitive damages, and the second is whether the arbitrator exceeded his authority by awarding a remedy that was not expressly defined in the CBA.

As to the first question, the judge pointed out:

> In 1970, Congress passed the Postal Reorganization Act, the PRA, to establish a postal service that ran more like a commercial business than its predecessor. As a result of the PRA, USPS now operates as a self-sustaining system whose revenue comes from the sale of its products as opposed to tax revenue. The PRA also gives USPS the power to sue and be sued in its name and provides for collective bargaining.

She ruled in relevant part as follows:

> This court understands the Supreme Court's holdings to mean that unless "one of a limited set of exceptions applies … an agency or other federal entity with a sue-and-be-sued clause cannot escape the liability that a private enterprise would face under similar circumstance. Note: I'm quoting from *Conn v. American National Red Cross, 168 F.Supp.3d 90, 95*, which quotes *FDIC v. Meyer, 510 U.S. 471, 482*.
>
> Thus, I have little difficulty concluding that Congress intended to waive sovereign immunity as to USPS by virtue of the PRA. None of the enumerated exceptions that are listed by the Supreme Court in Loeffler apply in this case:
>
> Subjecting USPS to punitive damages is not inconsistent with the statutory scheme. The language of the PRA gave USPS the status of a commercial business, which is consistent with Congress's intent that USPS operate as one. A commercial business is liable for punitive damages when appropriate.
>
> Accordingly, I find that sovereign immunity does not shield USPS from liability for punitive damages where appropriate.

As to the second question, Judge Chutkan ruled in relevant part:

> For one, the CBA here is silent as to the remedies available to the arbitrator, and surely an arbitrator is permitted to order a remedy that is not expressly detailed in the CBA when the CBA doesn't discuss any remedies.
>
> As I discussed previously, rulings from the Supreme Court and the D.C. Circuit generally permit an arbitrator to go beyond the bounds of the CBA in fashioning a remedy, allowing him to look to industry common law and practice between the parties.
>
> The Court, therefore, finds that Arbitrator Roberts did not overstep the bounds of his authority in ordering USPS to pay punitive damages.

It should be noted that USPS allowed the time limits for appealing this decision to the federal circuit court to lapse. That ought to tell you something.

If management would just spend as much of their time and energy on contract compliance as they do on trying to avoid accountability, peace and goodwill would surely follow.

In closing, I wish all of you and your families a wonderful holiday season and a happy New Year!