

REVIEW COMMITTEE DECISION

Review Committee File Number 301
Colgate Division Grievance Number 3-61

Subject of the Grievance

Sometime in 1958, a Collector headquartered in Oroville was assigned to clerical work in the Oroville office. The employee's classification was not changed. The grievant, a Clerk C in the same office, was assigned the Collector's work at that time and has apparently continued in such work until sometime in 1961. During the period that the grievant was assigned the work formerly performed by the Collector he was classified and paid as a Clerk C. The record submitted to the Review Committee indicates that the district arranged the switch of duties between the two employees as the Collector was physically unable to perform the activities of his classification. The Division felt that such a change of duties would avoid the necessity of reducing the Collector's rate of pay.

The correction asked for by the grievant is that he be paid at the rate of pay established for the Collector classification for all of the time that he was assigned to relieve the regular Collector. The Division admits that the employee was improperly classified and paid, but contends that in accordance with the provisions of Section 9.5 of the Agreement relating to Clerical Employees it is not required to make a retroactive pay adjustment beyond 30 days from the date the grievance was filed.

Discussion

Section 9.5 of the Clerical Agreement was amended July 1, 1959, and again on July 1, 1960, to provide that grievances shall, except as provided for in Section 9.8, be filed not more than thirty (30) calendar days following the date of the action complained of, or the date the employee became aware of the incident which is the basis for the grievance. The effect of this Section is to prevent the filing of stale claims wherein the employee is aware of the incident which is the basis of the grievance for a period in excess of thirty (30) calendar days. In the case of a continuing violation, i.e., the infraction goes on without interruption, the filing period continues for thirty calendar days after the employee becomes aware of the incident which is the basis for the grievance.

Incidental to this, an additional effect of the Section concerns the question of a retroactive pay adjustment. When the employee files a grievance within thirty (30) calendar days following the date he becomes aware of the incident which is the basis of his grievance, the period of a retroactive pay adjustment may extend from the date the violation commenced until it is stopped.

A different conclusion may be reached in a different situation where the violation continues after the employee becomes aware of the infraction, but he does not file a grievance within thirty (30) calendar days thereafter. The period of retroactive pay adjustment in such an instance will not exceed thirty (30) calendar days following the date the employee became aware of the incident.

Referring then to the present grievance, the Division states that the Company was not aware that they were in violation of the contract by working the Clerk C. in the Oroville District Office, as a Collector in the Oroville District until the matter was brought to their attention at the Division Joint Grievance Committee meeting of March 16, 1961. Since in this case the Division states that it was unaware of the violation, and there is no showing that the employee was aware of a violation, it would be unreasonable to impute such knowledge to him. Here, there appears to be no disagreement as to the fact that the employee filed a grievance within the time period provided for in Section 9.5.

The question remains, however, as to the length of time to which the employee is entitled to back wages as a Collector. This should be settled in accord with the formula set forth above.

Decision

It is the decision of the Review Committee that the grievant is entitled to a retroactive pay adjustment for all work performed by him as a Collector at the appropriate rate of the Collector classification, It has been agreed that such retroactive pay adjustment, computed on the basis of the estimated time the grievant was engaged in collection work in the area served by the Oroville office, amounts to \$423.65 for the period between November 3, 1958 and February 14, 1961.

FOR UNION:

Kenneth Stevenson
W. M. Fleming
L. L. Mitchell

By L. L. Mitchell

Date Jan 16, 1962

FOR COMPANY:

E. F. Sibley
C. L. Yager
V. J. Thompson

By V. J. Thompson

Date January 12, 1962