

REGULAR ARBITRATION

FEDERAL AVIATION)	Tuition Reimbursement
ADMINISTRATION)	Grievant: Richard Anderson
and)	
NATIONAL ASSOCIATION)	
OF AIR TRAFFIC SPECIALISTS)	#SO-04-452-PIE-03
)	SO-04-455-PIE-04

Before: KATHRYN DURHAM, J.D., ARBITRATOR

Appearances:

For the FAA: Lawrence Kuo
 For NATCA: Scott Malon
 Place of Hearing: Atlanta, GA
 Date of Hearing: March 24, 2005
 Date Record Closed: May 14, 2005
 Date of Decision: June 8, 2005

DECISION SUMMARY

Management violated Article 77 of the 2004 NAATS/FAA Bargaining Agreement when it failed to respond appropriately to Grievant's requests for tuition reimbursement. Management denied Grievant's request based on a reason that is not valid within the language of Article 77. Management denied the reimbursement citing solely a lack of available funds. Management shall cease and desist from ignoring its obligation to apply Article 77 according to its terms.

The evidence demonstrates that the two courses taken by Mr. Anderson are clearly not "directly related to the position currently held by the bargaining unit employee." This is a basic requirement for reimbursement of tuition. For this reason, Grievant shall not be reimbursed for Aviation Legislation or Aviation Law at Embry-Riddle Aeronautical University pursuant to this grievance.


 Kathryn Durham, Arbitrator

I. ISSUE

Union Statement: Did the Agency repudiate and/or violate the Parties' 2004 collective bargaining agreement specific to Article 77 when they disallowed Mr. Anderson reimbursement of educational expenses solely on the basis of cost, a unilaterally developed criteria element not specifically expressed within the Agreement? If so, what is the remedy?

Agency Statement: Did the Agency violate Article 77 of the 2004 NAATS/FAA Agreement when it denied ATCS Richard Anderson's requests for advanced approval for reimbursement of tuition expenses for courses in Aviation Legislation and Aviation Law? If so, what is the appropriate remedy?

II. APPLICABLE CONTRACT ARTICLE

Article 77 provides in pertinent part:

Section 2. Educational expenses for tuition ... for non-agency training, taken during non-work hours, will be reimbursed for those courses offered by an accredited institution, which are directly related to the position currently held by the bargaining unit employee. ... It is the responsibility of the manager to insure that the training is mutually beneficial to the employee and the Agency. ... The expenditure of funds must also be certified by the appropriate procurement official.

III. DISCUSSION

The evidence establishes that in early February 2004, Grievant Anderson wanted to augment his resume in light of anticipated reductions-in-force abolishing his position, that of Air Traffic Control Specialist at an Automated Flight Service Station. He identified an Aviation Legislation course at Embry-Riddle Aeronautical University that he felt would make him more marketable within the Agency. Grievant requested reimbursement of prospective educational expenses through appropriate channels.

Local management denied the request, citing a lack of available funds. Mr. Anderson filed a grievance.

Bruce Miller responded to the grievance on February 10, 2004, "After further investigations I determined that no funds are currently available. I suggest that you submit your request at a later date."

On February 20, 2004, Shane Goldman responded to the first grievance, "The expenditure of funds must also be certified by the appropriate procurement official. ... I was unable to approve your enrollment because there is no money at the present time for tuition reimbursement. This was again verified on February 18, 2004 with ASO-540."

After successfully completing the Aviation Legislation course, Grievant requested reimbursement for a second course, Aviation Law, under Article 77. This request was denied on the same grounds. A second grievance was filed.

On October 19, 2004, Michael O'Shea denied the second grievance, "While I don't believe a course in Aviation Law directly relates to the position you currently hold, the issue does not have any relevance at this time. As previously stated in the above mentioned response there is no money available to reimburse for educational expenses for training provided by sources outside the Agency." (Jt. 2. p.2)

Conclusions:

Article 77 requires advanced approval of the expenses by the appropriate procurement official. Management's argument implies that this provision justifies denial of the request for reimbursement for lack of available funds. I am persuaded by the record as a whole that where the following conditions are met, advanced approval will not be arbitrarily withheld:

1. timely request for reimbursement for tuition expenses
2. directly related to the employee's position
3. of mutual benefit to the Agency and the employee
4. submitted to the appropriate supervisory official.

This provision places an obligation on the parties to forward the appropriate procurement form to the appropriate procurement official. Approval by the procurement official is an administrative step. It is not a back door allowing the Agency to withhold funding.

As stated at page 20 of the Agency's post-hearing brief, "Mr. Cochran's and Mr. Yuknewicz's testimony establishes that if an Article 77 request was submitted that met all of the specified requirements, the Agency would have found the money needed to fund such a request, regardless of spending exigencies. (Cochran, TR 273-274 and Yuknewicz, TR 148, 150, 152 and 153-154.)"

In sum, then, management mishandled the request by basing the denial solely on a lack of available funds. The contract was violated.

On the other hand, the record is equally compelling that the requested courses, Aviation Legislation and Aviation Law, were not directly related to the AFSS-ATCS position occupied by the Grievant. While the courses are not as unrelated as basket weaving, they also are clearly not directly related to Grievant's duties. The extent to which Grievant's work involves any aviation legislation or aviation law is extremely tangential at best.

I am not persuaded by the Union's argument that these courses would translate into increased points for Grievant in a promotion action and therefore, should qualify for

reimbursement under Article 77. Upward mobility does not appear to be a negotiated goal inherent in Article 77.

There was no allegation of or evidence of disparate treatment in the application of Article 77 by management.

The question in this case ultimately boils down to whether management inattention to or disregard of the criteria for denial of reimbursement specifically outlined in the labor agreement warrants reimbursement to Grievant for courses which do not, in fact, meet the criteria for reimbursement.

I do not think the Union's requested remedy is appropriate to the violation. Grievant was not precluded from taking the courses in his own time; he was not penalized for taking them. He simply is not reimbursed for taking them. Had the courses met the other criteria, an Award of reimbursement would be appropriate. However, the record does not support such a conclusion. For this reason, a cease and desist order is employed to prevent future inattention to contract provisions by local management.


IV. AWARD

Grievance affirmed in part and denied in part.

The Agency shall notify all supervisors and managers of their obligation to apply Article 77, as written, to requests for education reimbursement. Management shall cease and desist from employing non-negotiated criteria in the place of negotiated criteria when addressing employee requests for tuition reimbursement and when responding to grievances. Lack of available funding is not a valid reason for denying an otherwise valid request for educational expenses reimbursement under Article 77.

Grievant shall not be reimbursed expenses he incurred by taking the Aviation Legislation and Aviation Law courses at Embry-Riddle Aeronautical University.

Respectfully submitted this 8th day of June 2005.


Kathryn Durham, J.D., Arbitrator