

PERFORMANCE EVALUATION

Grievant saw her evaluation scores lowered when she moved from the Covington Service Center to the Cincinnati District Office despite the fact that many of the skills from the old position (Tax Examining Clerk) transferred to the new one (TE/GE Tax Examining Assistant). On top of this, the immediate supervisor was new herself and at hearing it was proven that she did not understand the Rating Scale requirements found at Article 12, Section 5 of Nord V; and she was predisposed against giving employees 5's. Her predisposition was proven through credible testimony of witnesses to remarks she made during orientation. The Arbitrator raised the scores of the Grievant one point in each element.

Bonnie Lawson, Chapter 9 and IRS

John Remington

9/22/2000

FEDERAL MEDIATION AND CONCILIATION SERVICE

EXPEDITED ARBITRATION AWARD

In the matter of the arbitration between)
)

INTERNAL REVENUE SERVICE)
)

and)

NATIONAL TREASURY EMPLOYEES UNION)
Chapter Number 9)

)

Bonnie Lawson, Grievant

THE PROCEEDINGS

The above captioned parties, having been unable to resolve a grievance concerning the 1999 Annual Performance Appraisal of Grievant Bonnie Lawson, selected the undersigned Arbitrator John Remington, pursuant to the expedited provisions of their collective bargaining agreement and through the procedures of the Federal Mediation and Conciliation Service, to hear and decide the matter in a final and binding determination. Accordingly, a hearing was held on September 14, 2000 at Cincinnati, Ohio at which time the parties were represented by counsel and fully heard. Oral testimony and documentary evidence were presented and the parties made oral closing arguments on the record.

The following appearances were entered:

For the Agency:

Mahai Muset

GLS Attorney
New York, NY

Craig Holtkamp

Human Resources Manager

For the Union:

Thomas D. Coates

Assistant Counsel
Chicago, IL

THE ISSUE

At the commencement of the hearing, the parties stipulated that the issue before the Arbitrator was:

WHETHER THE PERFORMANCE EVALUATION RECEIVED BY GRIEVANT IN APRIL OF 1999 WAS PREPARED IN A FAIR AND OBJECTIVE MANNER AND, IF NOT, WHAT SHALL THE REMEDY BE?

RELEVANT CONTRACT PROVISIONS (NORD V)

Article 12

Performance Appraisal System

Section 3

Critical Elements and Performance Standards

Section 4

Performance Appraisals

Section 5

Rating Scale

BACKGROUND

The Internal Revenue Service, hereinafter referred to as the "AGENCY," operates a tax service center in Covington, Kentucky and other administrative services in Cincinnati, Ohio. The National Treasury Employees Union and its Chapter No. 9, hereinafter referred to as the "UNION", represent classified employees of the Agency at these locations including, but not limited to, Tax Examining Assistants. Bonnie Lawson, the Grievant in this matter, has been employed intermittently by the Agency since the 1970's. Following a ten-year hiatus, Grievant returned to the employ of the Agency in 1989 and has been continuously employed as a seasonal or regular employee at the Covington Service Center since that time. In 1995 Grievant became a permanent employee. In October of 1998 she transferred from a Tax Examining Clerk position at the Covington Service Center to a Tax Examining Assistant in TEGE Customer Accounts in Cincinnati. She was released from On-the-Job Training in December of 1998 and worked in her new position through March 31, 1999 when her 1999 Performance Appraisal period ended. It is Grievant's disagreement over the ratings contained in the 1999 Performance Appraisal that gave rise to the instant grievance.

NTEU Chapter 9 Steward Ron Vinson filed a timely grievance contesting the above Performance Appraisal on Grievant's behalf on April 30, 1999. This grievance alleges in relevant part "Grievant was lowered from all '5's' to '3's' and '4's' in four areas." In remedy the grievance seeks to have the prior ratings restored and the award re-evaluated. This grievance was denied on June 22, 1999 by Customer Service Manager Michele Martin at Step 1, and was subsequently denied at Step 2 in August of 1999 and finally at Step 3 in October of 1999. It was thereafter appealed to arbitration and is properly before the Arbitrator for final and binding resolution.

CONTENTIONS OF THE PARTIES

The positions taken by the respective parties are straightforward. The Union alleges that the 1999 evaluation of Grievant was not fair and objective, was inaccurate, and reflected only a portion of the evaluation year. The Agency maintains that Grievant was promoted to a position that required more skills and training, that she transferred from a clerical to an analytical position, and that due to these factors her performance, while fully successful, was not outstanding.

DISCUSSION, OPINION AND AWARD

The Agency relies primarily on the testimony of Customer Service Unit Manager Michele Martin to establish its contention that, while Grievant is a competent and valuable employee, the skills and abilities required in her new position had not been fully mastered when the annual performance appraisal was written. Martin is Grievant's immediate supervisor and conducted the Performance Appraisal. She testified that she is a new supervisor and has only been manager of the unit since June of 1998. However, she had no employees to supervise until October of 1998. Accordingly, the Performance Appraisals prepared for all nineteen (19) unit employees in 1999 were Martin's first evaluations. Since she was a new supervisor she testified that in conducting employee appraisals she relied on the assistance of her mentor, Myrna Huber, and a Specialist who is a bargaining unit employee. Despite her inexperience, Martin maintained that she was able to make fair and objective evaluations of all the employees under her supervision. However, she admitted that she has had no training to review the work of other employees and instead "learned on the job." Martin further testified that although she did not expect any of her new employees to perform in an outstanding manner because of the new skills and training requirements, it was

possible for an employee to do so. Martin's credibility in this regard was substantially diluted by the testimony of Union Steward Ronnie Clemons, employees Andrea Switser, Stephanie Broach-Camp, and Grievant. All credibly testified that Martin had publicly advised them at an orientation meeting in October of 1998 that she would not be giving any "5's" (Outstanding) on performance appraisals since, in Broach-Camp's words, "no one is perfect and new people don't have the training." According to Switser, Martin advised the new employees that "no one will get 5's" even though they had previously earned "5" ratings.

As noted in the above discussion, it is readily apparent that Martin failed to properly utilize the Rating Scale required by the provisions of Article 12, Section 5, supra. This Section clearly contemplates that job elements will be rated on a five point Likert type scale. However, by predetermining that no employee would be rated as "5" (Outstanding) on any element, Martin effectively reduced the scale to four points and thereby its effectiveness as a rating instrument. While it is certainly understandable that Martin has high performance standards both for herself and those she supervises, those standards cannot be applied in violation of the collective agreement. No supervisor can arbitrarily say, "There won't be any fives given in my unit." As Section 4.E. of the collective agreement notes, "Emphasis on the work unit does not lessen the Employer's obligation to provide uniformity at the appointing office level." This is so despite the fact that Grievant was admittedly given only basic assignments. If she performed those assignments with excellence, such excellence should be reflected in her Performance Appraisal even though there were more complex and difficult tasks that she was not assigned because of her inexperience and training. It would be ludicrous to maintain that an employee cannot perform basic tasks in an outstanding manner, particularly when they are the only tasks assigned.


CUSTOMER RELATIONS-5
STATUS INQUIRIES AND PROCEDURES-4
EDS/IRS INQUIRIES-4
WORKLOAD MANAGEMENT-5
OTHER DUTIES AND ASSIGNMENTS-5

The Arbitrator is most reluctant to second-guess the considered evaluations of Supervisor Martin. While he has found that Martin failed to properly evaluate Grievant by predetermining that no outstanding ("5") ratings would be given, this is not to suggest that her judgments of Grievant's performance are without merit. Further, the Arbitrator is well aware that supervisors must have some discretion in making subjective evaluations and that if their estimate of an employee's performance is at variance with the employee's view, it is not necessarily the result of bias or lack of objectivity.

The area of EP/EO Tax Law is difficult to assess due to conflicting claims regarding Grievant's background. Generally speaking, there was no evidence to show that the Agency credited Grievant with the job knowledge of tax law acquired in her various assignments and details at the Service Center, and it would appear that Grievant brought a greater knowledge of tax law to the new job than she was credited with. However, all of this knowledge was not relevant to the new job. Grievant appears to have exceeded fully successful in Interpretation and Application and Analysis and Evaluation, but there is no evidence that her accomplishments in Research more than met expectations. Accordingly, an appropriate rating would be "4" since she exceeded in two of the three areas. In Customer Relations it is clear from the record that she exceeded in all areas. Accordingly, her rating is "5." In Status Inquiries and Procedures, she appears to meet the standards in two areas (Internal Use Document Preparation and Adherence to Procedures) and exceed in the others. Her rating is "4" since she exceeds in more than half. In EDS/IRS she exceeds in Interpretation and Application and Analysis and Resolution. Again,

Grievant's testimony regarding her prior familiarity with EDS/IRS was persuasive. As was the case with EP/EO Tax Law, the problem area is Research that she only appears to meet. Accordingly, her rating is "4."

The record clearly reveals that Grievant exceeded in each of the three areas under Workload Management. The fact that she was only assigned basic cases cannot be used against her as hereinabove noted. Her rating is "5." Finally, it is readily apparent that Other Duties and Responsibilities should have been rated as "5." Even the narrative written by Martin supports such a conclusion. Finally, Grievant's overall rating would then be "4," Exceeds Fully Successful, since she did not achieve an Outstanding rating in more than half of the critical elements.



John Remington, Arbitrator

September 22, 2000

St. Paul, MN