

USPS Pays the Price for Ignoring HCR Contractor's Reports of Harassment

By David Hendel

When a Postal Service procurement official dismisses a contractor's report of harassment by other postal employees, there will now be a steep price to pay. In considering such a case, the U.S. Court of Federal Claims held that procurement officials who simply accepted the Administrative Official's story had acted in bad faith. Their failure to heed the contractor's concerns and their termination of his contract constituted a breach of contract, entitling the contractor to recover breach damages. The case is *Brian Bowles v. U.S.*, 144 Fed. Cl. 240 (Fed. Cl. 2019), and was decided on August 8, 2019.

Issues arise

In 2009, Brian Bowles won award of an HCR/CDS combination contract to deliver mail in Hartford, VT. The contract required that he transport mail between different post offices and deliver mail to postal customers. He performed the contract uneventfully for about a year.

But problems arose after local postal officials asked Bowles to regularly deviate one-tenth of a mile from his route to pick up mail at a bookstore. The Administrative Official did not think Bowles should be paid for these pickups, even though they were not in the contract schedule and caused him to deviate from his route. She thus did not fill out the paperwork for Bowles to receive payment. Bowles had kept handwritten notes detailing the trips and submitted them to the regional USPS Transportation Manager, but USPS would not pay Bowles because the AO had not filled out the internal paperwork.

Another issue that arose was the garnishment of Bowles's paychecks. Bowles was subject to two garnishment orders, but the Postal Service regularly withheld more than legally permitted. Indeed, on 13 occasions, USPS withheld the entire amount of his monthly wages.

The AO continued to order Bowles to do work that was not within his contract. Bowles alleged that the AO held a pair of scissors to his face, while stepping on his foot and slamming mail bins around.

Local postal officials further harassed him by conducting unnecessary and ill motivated inspections of his vehicle. He initially refused to allow the inspection. A few days later he allowed them to conduct a vehicle inspection and was issued a PS Form 5500 irregularity notice for "unprofessional activity" during the inspection. Nothing was found wrong with his vehicle.

Additional disputes arose, and the AO called the police, alleging that Bowles had verbally assaulted her. Bowles denied it and said she was the aggressor.

Meeting to address concerns

Eventually, a meeting was called to address the AO's and Bowles's concerns about the work environment. At this meeting, postal officials first learned that Bowles had not been receiving payment for the Extra Trips he ran to the bookstore because the AO had not submitted the paperwork. The AO then complained about Bowles's alleged bad attitude and her fear of him.

After the meeting, Bowles finally received payment for his Extra Trips and his relations with the AO seemed to improve. But the AO returned to her old trick of not submitting paperwork for Extra Trips to the bookstore, so Bowles refused to run those trips. Another postal official intervened and found a way to pay Bowles for the trips.

Next, scanner issues arose. The AO programmed Bowles's scanner with her own employee code, instead of Bowles's code, which prevented him from activating it. There was also no place for him to return the scanner to its cradle and charge it at the end of the day. Instead of trying to fix these problems, the AO repeatedly issued 5500s to Bowles over his alleged refusal to use the scanner. Bowles did not respond to these 5500s as he was unaware of the 5500 process.

Another meeting was held, attended by various postal officials. They confronted Bowles, contending he exhibited unprofessional behavior toward the AO. He denied this and said the AO was making unfounded allegations against him. Upset at how the meeting went, Bowles reached out to the Contract Specialist and said he was no longer going to perform the contract. The Contract Specialist warned him that if he stopped work, he would be liable for reprocurement costs, so he agreed to continue working for another two months.

Scanner attack

After Bowles agreed to continue working, the AO instigated another confrontation and this time she shot for the moon. She claimed that Bowles hit her over the head with a scanner three times, causing her to fall to the floor and lose consciousness. Bowles denied that. He said the AO had asked him for his scanner, but he refused, fearing she would use the scanner to make it appear he was misperforming the contract. He said he left the post office to deliver the mail and had not attacked the AO.

Based on the AO's allegations, the Postal Service suspended Bowles and denied him access to the post office. When he did not provide a substitute carrier to perform the route, USPS terminated Bowles's contract for default. Bowles appealed the default termination to the U.S. Court of Federal Claims.

Court decision

A four day trial was held. The judge found Bowles to be "highly credible." He noted that Bowles was not sophisticated or highly educated, and he found it difficult to cope with the pattern of hostility he encountered. He was an intimidated man, not a violent or activist person.

By contrast, the judge found that the AO was not credible. The judge found that she and other postal officials acted in bad faith and with the specific intent to injure Bowles and dispossess him of the contract. The first acts of bad faith were the AO's refusal to fill out the requisite paperwork needed to pay Bowles for the Extra Trips he ran. The AO's failure to do so stemmed from her (incorrect) belief that Bowles was not entitled to payment for making those trips.

At the trial, several former postal officials testified, all in favor of Bowles. One of them testified that the AO's inspection of Bowles's vehicle was conducted improperly. He further noted that the inspection was not necessary and differed greatly from how the AO had inspected other vehicles.

The judge found that the AO's allegations against Bowles were false and that she improperly issued 5500s to him. But she was not the only USPS official who acted in bad faith toward Bowles. The

judge also found that USPS procurement officials acted in bad faith by berating Bowles without questioning the veracity of the AO's allegations. The judge also noted that the meetings held by the procurement officials showed the AO had acted improperly by not processing Extra Trip payments and implementing unsuitable scanner procedures. Yet the procurement officials continued to defend the AO's actions.

Secondary gain

The coup de grace against the Postal Service's case was the testimony of the attending physician who examined the AO on the day she said Bowles attacked her with the scanner. He said there was no evidence of any trauma to her head, despite her saying she had been hit there three times. In addition, the physician said that the AO's behavior during the examination displayed signs of "secondary gain." What is secondary gain? It means seeking to benefit from an injury, whether in hopes of getting more attention or compensation for the supposed injury.

The judge also noted that the scanner weighed 5 pounds and had a heavy metal bottom. If the AO had been hit three times with the scanner, it would have resulted in a large amount of physical damage, or even death. The judge thus concluded that the AO had falsely accused Bowles of the assault.

Damages award

The judge found that the various instances of harassment by USPS toward Bowles breached the implied covenant of good faith and fair dealing. This prevented Bowles from continuing performance of the contract. The judge also found that Bowles met the high standard required to show bad faith on the part of the government. As such, the default termination was improper.

Moreover, the Postal Service's bad faith conduct entitled Bowles to recover for breach of contract under the expectation theory of damages. The judge held that Bowles was entitled to full pay for the remaining 14 months of the contract, which was \$16,221. The judge also found that it was foreseeable that Bowles's contract would have been renewed for an additional term, as these contracts are customarily renewed absent negative performance of the contractor. Without the bad faith of postal officials, USPS would have renewed Bowles contract. In total, Bowles was awarded \$72,371.

Future implications

Under the holding in this case, postal procurement officials cannot automatically side with the AO or other local officials against that of the contractor. Doing so is bad faith conduct, particularly if the facts show that the AO has previously not administered the contract properly. Procurement officials would thus do well to take it seriously when postal contractors notify them of harassing and hostile actions by local postal officials. Simply taking the side of their fellow postal employees only encourages those officials to continue the harassing conduct, which can result in far greater consequences later on.

The Court's calculation of damages was also quite significant and shows there is a high cost to USPS for simply siding with its employees. The Court awarded Bowles the full amount of the contract price for the remaining contract term, plus the full contract price for another four-year renewal term. Bowles' contract price, which ended in 2012, was relatively low. Had the value of his contract been

\$70,000 per year, he would have received \$361,666. In addition, he would be entitled to interest and possibly recover a portion of attorney fees.

It's not clear if USPS procurement officials are aware of this case and the consequences of reflexively taking the side of their fellow employees. Let's hope our colleagues in the CDS Office are aware of it now. Because this case makes clear that dismissing contractors who complain about harassment can lead to large contractual liabilities against the Postal Service.

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