

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

**Complaint of Capital One
Services, Inc.**

Docket No. C2008-3

**AMERICAN POSTAL WORKERS UNION, AFL-CIO
MOTION FOR SANCTIONS UNDER RULE 25(c)
AGAINST THE UNITED STATES POSTAL SERVICE
(September 2, 2008)**

Pursuant to Section 25(c) of the Commission's Rules of Practice, the American Postal Workers Union, AFL-CIO (APWU) seeks sanctions against the United States Postal Service for its failure to follow Commission Orders and failure to provide or permit discovery pursuant to Rules 26 to 28, in connection with the deposition of Jessica D. Lowrance.¹

Rule 25(c) provides that

if a participant or an officer or agent of a participant fails to obey an order of the Commission or the presiding officer to provide or permit discovery pursuant to §§ 3001.26 – 3001.28, the Commission or the presiding officer may make such orders in regard to the failure as are just... .

Presiding officer Ruling C2008-3/3 directed that Ms. Lowrance "bring all documents from her offices relating to the issues in the Capital One Complaint to the deposition for her reference." This ruling was reaffirmed in Presiding Officer Ruling C2008-3/7 which once again, directed the Postal Service "to provide the requested documents for use during the deposition." The Postal Service was to make a "good faith effort"

¹ On August 28, 2008, Capital One Service, Inc. filed a Motion for Sanctions under Rule 25(c) against the United States Postal Service for its conduct during the August 27, 2008, deposition of Ms. Lowrance. The APWU fully supports this Motion and requested relief.

to “produce all documents by 12:00 noon on August 28, 2008.” Despite the clear and numerous rulings, the USPS failed to produce the documents as requested in a timely fashion. In fact, even though the deposition resumed at 9:30am on August 28, 2008, and even though the Postal Service had been explicitly directed “to make a good faith effort to provide the requested documents by 12:00 noon” the Postal Service did not produce any responsive documents until approximately 10:30 p.m. on August 28. This required counsel to view and prepare cross examination on the documents at 11:00 p.m. that night and necessitated that the deposition continue until 1:30am. The Postal Service’s failure to follow the clear orders of the Commission resulted in an exceptionally long but ultimately fruitless day as there was simply not enough time to fully digest the material and conduct a full examination.

For those reasons, the APWU respectfully requests the Commission impose just sanctions on the Postal Service pursuant to Rule 25(c). Specifically, the APWU requests that the Postal Service be deemed to have waived all relevance and deliberative process privilege objections in the context of the deposition of Ms. Lowrance and in related document requests. The APWU also requests that the Postal Service be required to compensate the APWU for attorneys’ fees, including fees for professional staff, and costs related to the deposition, including all time and expenses necessary to prepare motions to compel on the evening of August 27, 2008; and all time and expenses incurred on August 28, 2008. This remedy is within the Commission’s authority to “make such orders ... as are just.” All parties in this proceeding are subject to the jurisdiction of the Commission and subject to

the Commission's rules. If the Presiding Officer rules that the award of fees and expenses is just within the meaning of Rule 25, the Postal Service is subject to that Ruling.

While understanding that the relief requested is extraordinary, the APWU believes that the requested sanctions may be the only way to deter the Postal Service from engaging in such obstructionist behavior in the future. In the post-PRA era, the Postal Service is not required to file enormous amounts of testimony for review by the Commission and participating parties. Yet the Postal Service is to act with an eye toward greater transparency and accountability. Over the two days required for the scheduled seven-hour deposition of Ms. Lowrance, the Postal Service exhibited a complete disregard for the repeated clear rulings of the Commission and total disdain for due process and transparency. The APWU is entitled to be made whole for the attorney time and expenses incurred due to the Postal Service's violation of the Commission's rulings; and the Commission needs to make it clear to all parties that its Rulings must be followed.

Respectfully submitted,

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