

C# 10169

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In the Matter of the Arbitration

between

The United States Postal Service

and

National Association of Letter
Carriers, AFL-CIO

Grievant: T. Mellan

P. O.: Potsdam

Case No. N7N-1W-C 30085
GTS No. 4441

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Before: Edward Levin, Arbitrator

Appearances:

For United States Postal Service: Joseph F. Panek,
Labor Relations Representative; Pat Conant,
Postmaster; Cathie Smith, Superintendent, Post
Operator; Thomas T. Mellan, grievant.

For National Association of Letter Carriers, AFL-
CIO: Jerry Segovis, President; David Anderson, NALC
Steward.

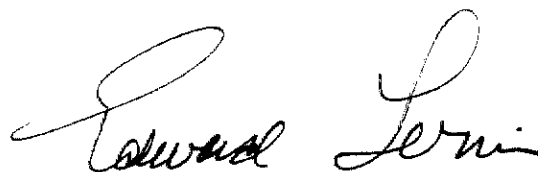
Date of Hearing: August 1, 1990

Place of Hearing: Potsdam, NY

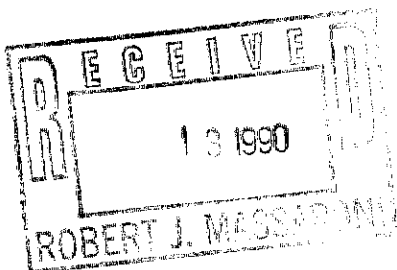
Award:

1. It was proper for the Postal Service to deny paid
military leave to the grievant.
2. The grievance is denied.

Date of Award: August 7, 1990



Edward Levin, Arbitrator



In accordance with the provisions of the collective bargaining agreement between the United States Postal Service(Postal Service) and the National Association of Letter Carriers, AFL-CIO(Union), the undersigned was designated Arbitrator to hear and determine the following issue:

1. Was it proper to deny paid military leave to the grievant?
2. If not, what shall be the remedy?

A hearing was held on August 1, 1990 at the facilities of the United States Postal Service located at 21 Elm Street, Potsdam, New York at which time the parties were afforded opportunity to present testimony, documentary evidence and oral argument in support of their respective positions.

UNION'S POSITION

It is the Union's position that when Letter Carriers have authorized military leave to report under orders for a required physical, they are entitled to pay.

In this case, Thomas T. Mellan, the grievant who was in the inactive reserves, was ordered to report for his quadrennial physical examination February 4, 1989. The grievant submitted the military order and a 3977 request for military leave to the Postal Service which was subsequently approved. Mr. Mellon went for his physical examination,

however, he never got paid by the Postal Service.

The Union points to U.S. Code 37-206 which states that members of the National Guard who are on inactive-duty training are entitled to compensation. The Union also cites that U.S. Code 10-683 shows that duty without pay shall be considered for all purposes as if it were duty with pay.

The Union feels that the law provides that the grievant should be paid military leave for February 4, 1989.

POSTAL SERVICE POSITION

The Postal Service argues that Section 517.121 of the Employee and Labor Relations Manual lists the types of duties covered for eligible military leave. They are active duty, field and coast defense training. No mention is made of, "inactive duty without pay." Mr. Mellan was given a four month period during which he had to obtain his physical examination. It is the Postal Service's position that Mr. Mellan could have scheduled his physical examination for one of his off days.

The Postal Service also argues Section 517.11 of the Employee and Labor Relations Manual, defines military leave as an authorized absence from postal duties without loss of pay, time or performance rating. The grievant was a part time flexible employee and no conflict with work arose because of his military duty and his work schedule, since the grievant was not scheduled to work on February 4, 1989.

Therefore he lost nothing and is not entitled to any pay.

Article 7.1.A.2 of the National Agreement permits management the right to assign part time employees to work flexible hours as determined by the employer. There is no guarantee that flexible employees would work 8 hours as is the case with full time employees.

The Superintendent of the Potsdam Post Office stated that she did not give the grievant 8 hours pay because February 4, 1989 was a non-scheduled day and he would not have worked on that date had he not been on military leave. However, a Utility Card submitted into evidence showed that a part time flexible clerk was temporarily assigned on February 4, 1989 to work as a part time flexible carrier for 2.78 hours. The Superintendent stated that if Mr. Mellan did not have military leave that day he would probably have worked 2.78 hours at that time.

It is the position of the Postal Service concerning part time flexible employees that if they want a day off they may request it and if they are needed on that day they would have to use annual leave. If they are not needed it is a non-scheduled day. The Postal Service claims that since the grievant is a part time flexible employee, it could have juggled his work days and given him off on February 4, 1989. The Postal Service cites Section 517.12.1 as limiting the duties for which military pay may be received. It is the Postal Service's opinion that the type of duty for which

military leave was granted to the grievant did not fall into that category.

The Postal Service contends that the pertinent controlling requirements are not the U.S. Codes but the National Agreement and applicable Postal Service rules and regulations. All that was required of the Postal Service was to allow Mr. Mellan time off to report for his physical. It was not active duty and thus not eligible for payment under Postal rules and regulations. Nor was there a conflict in the grievant's work schedule inasmuch as the grievant was a part time flexible employee.

The Postal Service notes that Mr. Mellan works an average of 32 hours per week and in the week in question he was paid for a total of 31.57 hours. Therefore no loss of pay may be claimed by the grievant. The Postal Service sees no contractual violation in this case and asks that the grievance be denied.

ARBITRATOR' OPINION

The Union has failed to show that the US Codes cited pertains to the Postal Service or any other employer other than the military and has no standing regarding the interpretation of the National Agreement or Employee Labor Relations Manual. It pertains only to the condition under which the military reserves are entitled to pay from the government. The controlling language in this case is the

National Agreement and the Employee and Labor Relations Manual. In that respect the National Agreement is silent on military leave. The Employee and Labor Relations Manual states:

517.11 Definition. Military leave is authorized absence from postal duties without loss of pay, time, or performance rating, granted to eligible employees who are members of the National Guard or Reservists of the armed forces.

A careful reading of Section 517.121 Covered Duties, does not include the type of duty for which the military leave was granted to Mr. Mellan.

Accordingly the Arbitrator finds that the contract was not violated when the Postal Service denied paid military leave to the grievant. The grievance is denied.

File # 1044