

REGULAR ARBITRATION PANEL

C#10629

In the Matter of the Arbitration

- between -

UNITED STATES POSTAL SERVICE

- and -

NATIONAL ASSOCIATION OF LETTER CARRIERS,
AFL-CIO

David R. Lewis

Liverpool, New York
Post Office

USPS Case No. N7N-1N-C 33292
NALC Case Nos. L-020-90

Before: George S. Roukis, Arbitrator

Appearances:

FOR THE UNITED STATES POSTAL SERVICE

Joseph Panek, Labor Relations Representative
Glen Wells, Absence Control Supervisor
Mark D. Wishes, General Supervisor of Mails

FOR THE NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO

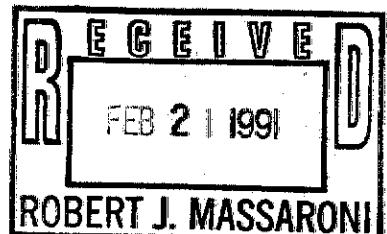
Donald Murray, Labor Advocate
Jerry Segovis, President, Branch 134 NALC
David R. Lewis, Grievant
Spencer Baker, Letter Carrier-Regular
Joseph Castro, Postal Manager (called by Union)
Angie Payne, Superintendent of Postal Operations, Liverpool
Post Office (called by Union)

Place of Hearing: United States Post Office
5640 East Taft Road
Syracuse, New York

Date of Hearing: February 4, 1991

Award: Denial of payment of the cash advance was not a violation
of the National Agreement

Date of Award: February 14, 1991



Pursuant to the arbitration procedures set forth under Section 4B of Article 15 of the National Agreement between the United States Postal Service and the National Association of Letter Carriers, AFL-CIO, hereinafter referred to as the Postal Service and the Union, respectively, the undersigned was appointed Arbitrator to hear and decide the grievance herein. Accordingly, a hearing was held in Syracuse, New York, at which time the parties were afforded ample opportunity to present evidence and testimony germane to their positions.

The adjudicative issues before the Arbitrator are:

Was the denial of payment of cash advance for the two (2) week approved annual leave proper?¹

If not, what shall be the remedy?

¹The period of time involved was from July 23, 1990 to August 4, 1990.

PERTINENT AGREEMENT PROVISIONS

ARTICLE 19 HANDBOOKS AND MANUALS (in part)

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21 Timekeeper's Instructions.

By reference to Employee and Labor Relations Manual, Section 513.5 Advanced Sick Leave, specifically Section 513.52 quoted as follows: "513.521 Installation Head's Approval. Officials in charge of installations are authorized to approve these advances without reference to higher authority" and Section 857.22 of the F-1 Handbook which reads, "An interim salary payment of \$20 or more must be made upon the request of an employee whose check was less than net amount due. The interim salary payment must be no more than the difference between the salary check and the net amount due."

*The Union also asserted that postal management violated Article 3 Management Rights and Article 10 Leave of the National Agreement.

BACKGROUND

The Grievant is employed as a regular Letter Carrier at the Liverpool Post Office. On October 1, 1989, he suffered an on-the-job injury, which was diagnosed as a right internal hernia and said injury necessitated hospitalization, surgery and extended absence from duty. In the meantime, during the subsequent months, Mr. Lewis had run low on annual and sick leave, but he was informed by the OWCP-USDOL Claims Examiner, by letter dated June 21 1990, that his claim for an employment related injury was approved. (See Joint Exhibit No. 2, p. 9 Letter from OWCP-USDOL Claim Examiner to Mr. Lewis.) By mid-summer of 1990, Mr. Lewis used up all of his sick leave, annual leave and some leave without pay. However, at this point, Mr. Lewis desired to take two (2) weeks vacation and accordingly asked his supervisor whether he could get an advance of leave. This amounted to a cash advance of eighty (80) hours annual leave. The Postmaster approved such request predicated upon the understanding that said advance would be repaid just as soon as OWCP-USDOL compensated him for lost leave time and said advance would come out of petty cash. Upon his return from vacation Mr. Lewis was informed that the Postmaster would not sign to release the funds and the Union filed the instant grievance contesting this refusal. By letter, dated October 15, 1990, OWCP-USDOL apprised Mr. Lewis that he was eligible for \$1,756.82 gross compensation, which represented 180 hours of leave used for the period covering December 12, 1989 through February 24, 1990. (See

Union Exhibit No. 5 for details.) Another document from OWCP refers to a check date of September 28, 1990 covering the period, February 13, 1990 through March 25, 1990. This relates to gross compensation of \$2,150.00. (See Union Exhibit No. 4.)

UNION'S POSITION

The Union contends that since postal management approved eighty (80) hours annual leave for Mr. Lewis on July 10, 1990 for the vacation period July 23, 1990 through August 4, 1990 and also promised him a cash advance to cover the hours of said leave, contingent upon later repayment from OWCP credited leave reimbursement, the Postal Service violated the National Agreement. It points out that it was common practice at the Liverpool installation for the Postmaster to advance funds and observes that said promise to Mr. Lewis was made in the presence of shop steward Spencer Baker and Supervisor Angie Payne. It further argues that the postmaster had authority under Section 513.521 of the Employee and Labor Relations Manual to grant advanced sick leave which in fact, he promised Mr. Lewis, but said promise was not kept.

Union Steward Spencer Baker testified that while he wasn't personally involved in advanced cash transactions, he was aware that other letter carriers received such payments without "hassle". He stated that he was aware Mr. Lewis received OWCP approval for sick and annual leave reimbursement and aware that the Postmaster

approved Mr. Lewis' vacation and advanced cash payment request. He also testified that he wasn't aware the Post Office lost money as a result of granting advanced cash payments.

Superintendent Angie Payne testified that the Postmaster advanced annual leave to several employees at Liverpool. She acknowledged that she approved Mr. Lewis' July 10, 1990 request for annual leave but noted she felt he would be repaid by OWCP. She also indicated that if a request for annual leave could not be granted because the employee exhausted all of his/her annual leave, the request would be automatically charged to Leave Without Pay (LWOP). "This is what happened here." She also reviewed how adjustments are made on Form 2240 and stated that Mr. Lewis did not request advanced sick leave. "I never saw any form."

Postmaster Joseph Castro testified that he approved Mr. Lewis' request for advanced annual leave. He stated that he didn't recall whether Mr. Lewis submitted a request for advanced sick leave in January, 1990, but noted that if an employee had used up sick leave and requested advanced sick leave, he usually approved it upon assurances from a physician. He also acknowledged that he approved cash advances for other Liverpool postal employees and observed that he never lost money as a result of such advances. He stated that advanced leave was granted only if time was on the card and it could be adjusted and noted that he initially agreed to the advance because Superintendent Payne approved it. (This approval was based upon the understanding that Mr. Lewis

was permitted by OWCP to buy the time back.) On cross-examination he testified that he had not seen Mr. Lewis' July 10, 1990 request for 80 hours annual leave (Form 3971 approved by Ms. Payne - Union Exhibit No. 1) and indicated that his testimony was based upon Mr. Lewis' request and his (Postmaster's) understanding with Ms. Payne. He also stated that cash advances could only be approved, if time could be adjusted on the Form 2240. He stated that if a mistake were made but time was on the card, he would make the salary adjustment. He also testified that if the 3971 Form was approved, there was no guarantee the employee would be paid. Payment rested upon actual time left on the card.

Letter Carrier David R. Lewis testified that in early 1990 he had run low on annual and sick leave and requested 200 hours advanced sick leave. He stated that about a week and a half after this request, the Postmaster told him that he would get it, but it was never done. In fact, the Postmaster started deducting annual leave. He stated that when he was notified by OWCP that his compensation claim was approved he showed the approval letter to Postmaster Castro and asked whether there was any way he could get annual leave (for vacation purposes).² He testified that Letter Carrier Spencer Baker, Robert James and Superintendent Payne overheard his request for advanced leave and noted that he was told he would be paid out of petty cash. This was told to him by Ms. Payne (Mr. Lewis' testimony). He further stated that he never

²Mr. Lewis stated that had he been given the 200 hours advanced sick leave it wouldn't have required a request for advanced annual leave.

received such cash advance and testified that he had to borrow the money. Meanwhile, he indicated that he could have reimbursed postal management from the check he received from OWCP dated September 28, 1990 (Union Exhibit No. 4).

POSTAL SERVICE'S POSITION

The Postal Service contends that the action requested by the Union is illegal, since the only grounds for allowing compensatory advances are set forth in Section 857 of the F-1 Handbook. It maintains that except for a lost payroll check, stolen payroll check or a check that was less than the net amount due, it is patently impermissible to grant salary advances. It referenced Section 857.27 as support for this prohibition.

".27 Salary advances made to employees under any conditions other than those stated in this section are prohibited." Moreover it asserts that circa July 10, 1990 Mr. Lewis did not have any leave left on the books and thus any supervisory approval for annual leave on the 3971 Form would be automatically converted to LWOP. Since Mr. Lewis hadn't been given approval for leave buy back from OWCP until October 15, 1990, there was no leave to grant him. In effect, without the approved buy back, Form 2240 could not be completed. It also notes that the Inspection Service was critical of the financial practices in the Liverpool installation particularly with respect to petty cash handling. Postmaster

Castro was recalled by the Postal Service's advocate to testify on this point. He stated that in the summer of 1990, there were financial problems in his installation and improper salary advances were cited in the Inspection Service's report. On cross-examination he testified that advances were given, if repayment was assured.

ARBITRATOR'S OPINION

In this dispute, there has been no showing how Articles 3 and 10 of the National Agreement were violated or whether there are implicit exceptions to Section 857.22 of the F-1 Handbook. Under the latter provision, permissible cash advances exceeding twenty (\$20.00) dollars applies to distinguishable definable situations. In the instant case, there is no dispute that Mr. Lewis OWCP compensation claim was approved on June 21, 1990 and no dispute that postal management was aware of this approval circa July 10, 1990. There is no dispute that when Mr. Lewis requested annual leave on July 10, 1990, he had exhausted sick and annual leave accumulations and thus, even with this approval, the annual leave would be converted to LWOP. There has also been no indisputable showing that advanced annual leaves had been approved when leave accummulations were at zero. To be sure, had the Postmaster authorized advanced sick leave in January, 1990, the grievance as posited would be moot. However, this was not the case, and the Postmaster doesn't remember whether Mr. Lewis requested advanced

sick leave in January, 1990. There is also no dispute the Postmaster extended cash advances to other employees, but as testified by Postmaster Castro such advances were made when it was possible to make an adjustment on the Form 2240. This required the contemporary presence of accumulated leave time in the employee's leave bank. There was no time left in Mr. Lewis' leave accumulations, though potentially such time was "in futuro" retrievable pursuant to the OWCP claim approval. Accordingly, and upon this record since there has been no showing what Agreement rule or postal regulation specifically authorized advanced cash payment for purposes as herein and since Section 857.22 of the F-1 Handbook does not permit cash advances for such purposes and since Section 857.27 precludes salary advances under any conditions" other than those stated in this section (857 Salary Check Problems) and since the cash advanced practices at the Liverpool installation were specifically criticized by the Inspection Service, the Arbitrator must find that the National Agreement was not violated. It is regrettable that Mr. Lewis was financially inconvenienced by what he perceived were authoritative representations, but said actions were not violative of the National Agreement.

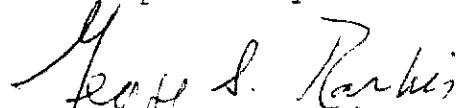
AWARD

Denial of the payment of the cash advance was not a violation of the National Agreement.

Issued in Syracuse,
New York

February 14, 1991

Respectfully submitted,


George S. Roukis
Arbitrator