

REGULAR ARBITRATION

 In the Matter of the Arbitration

between

United States Postal Service

and

National Association of Letter Carriers, AFL-CIO

Grievant: Mehul Mehta

Post Office: Waterford, CT

Case Nos. B16N-4B-C 18216391

B16N-4B-C 18216422

DRT Nos. 14-430457

14-430455

BEFORE: James R. Collins, Arbitrator

APPEARANCES:

For the U.S. Postal Service: John Gigola Jr.

For the Union: William Bothwell

Place of Hearing: Groton, CT

Date of Hearing: August 14, 2018

Briefs Received: September 10, 2018

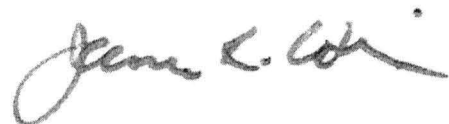
AWARD: The grievances are granted.

Date of Award: October 10, 2018

PANEL: NALC Region 14/USPS Northeast Area Regular Panel

Award Summary

Management violated Articles 17, 19, 21 and 31, by failing to provide a CCA sufficient limited duty and/or COP to compensate him while he recovered from a work-related injury; and, by failing to properly complete the appropriate sections of Form CA-7 and forward it to OWCP.



 James R. Collins

Issues¹

Did Management violate Articles 19 and 21, specifically the Federal Employees Compensation Act, ELM and EL-505 when they failed to provide adequate limited duty work to an injured CCA and failed to properly compensate him through COP? If so, what should the remedy be?

Did Management violate Articles 17, 19, 21 and 31, specifically the Federal Employees Compensation Act, ELM and EL-505 when they failed to properly complete the appropriate sections of Form CA-7 and forward to OWCP? If so, what should the remedy be?

Relevant Contract, Handbook, and Manual Provisions

ARTICLE 5, Prohibition of Unilateral Action

The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law.

(The preceding Article, Article 5, shall apply to City Carrier Assistant Employees.)

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ARTICLE 17. Representation

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ARTICLE 19. Handbooks and Manuals

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.

....

ARTICLE 21. Benefit Plans

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Section 4. Injury Compensation

Employees covered by this Agreement shall be covered by Subchapter I of Chapter 81 of Title 5, and any amendments thereto, relating to compensation for work injuries. The Employer will promulgate appropriate regulations which comply with applicable regulations of the Office of Workers' Compensation Programs and any amendments thereto.

....

ARTICLE 31. Union-Management Cooperation

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ELM, Section 541.11 Law

Under the provisions of the Postal reorganization Act, 39 U.S.C. 1005 (c), all employees of the United States Postal Service are covered by the Federal Employees' Compensation Act (FECA), 5 U.S.C. 81.

541.13 Coverage

541.131 Disability

FECA provides that employees who suffer job-related disabilities are entitled to:

- a. Continuation of pay (COP) for the period of the disability, up to a maximum of 45 calendar days, for a traumatic job-related injury (see 541.2d).
- b. Compensation for wages lost as a result of job-related injury or disease or illness.

¹ At hearing, the parties stipulated that the issues would be as stated in the Step B Decisions.

545.72 Eligibility

545.721 Initial Disability for a Traumatic Injury

To be eligible for COP, an employee must:

- a. Have a traumatic injury.
- b. File Form CA-1 within 30 days of the date of the injury and elect COP.
- c. Begin losing time from work within 45 days of the injury.

National Settlement Agreement M-01316

...the parties agree that pursuant to Article 3, grievances are properly brought when management's actions are inconsistent with applicable laws and regulations.

Federal Employee Compensation Act (FECA) Bulletin 13-03

Subject: New United States Postal Service Job Classifications

Background: The United States Postal Service has created two new non-career positions:

City Carrier Assistant (CCA), effective April 2013

Mail Handler Assistant (MHA), effective June 2013

Purpose: To inform the appropriate personnel of the procedures regarding payment of continuation of pay (COP) and payment of compensation to injured CCA and MHA employees.

...

A. Computation of COP

As part-time workers who generally do not work the same number of hours each week, but who do work each week of the year, COP for CCA and MHA employees should be calculated in accordance with 20 C.F.R. §10.216(b)(2). The weekly pay rate for COP is therefore the average of the weekly earnings for the year prior to the date of injury, in accordance with the following formula:

Total pay earned during one-year period prior to injury (excluding overtime), divided by 52 weeks for the year prior to the injury (or prorated if employee worked less than a year).

For purposes of this computation, a partial-work week is counted as an entire week.

B. Computation of Compensation

...

3. If, in Section 9(b) of the CA-7, the USPS indicated that the employee did not work in the position for 11 months prior to injury, but that the position would have afforded employment for 11 months but for the injury, compensation should be paid in accordance with 5 U.S.C. 8114(d)(2).

20 CFR §10.11 What should the employer do when an employee files an initial claim for compensation due to disability or permanent impairment?

(c) Upon receipt of Form CA-7 from the employee, or someone acting on his or her behalf, the employer shall complete the appropriate portions of the form. As soon as possible, but no more than five working days after receipt from the employee, the employer shall forward the completed Form CA-7 and any accompanying medical report to OWCP.

Employing Agency Guidelines Updated 9/07/2012

- Agencies **SHOULD NOT REJECT OR RETURN FORMS CA-7** to the claimant but rather ensure that the required form elements have been provided, verify leave status through the current date and submit the form to OWCP.
- CA-7 forms should be submitted no more than five working days after receipt from the employee.

Summary of the Evidence

The evidence shows that the grievant, Mehul Mehta, started work as a CCA on September 30, 2017, and was assigned to the Waterford Post Office (WPO). On February 2, 2018, while temporarily assigned to the Norwich Post Office, the grievant sustained an injury to his left shoulder. The grievant complained of shoulder pain but continued working his schedule

for a few days, before seeing a doctor on an off day. The doctor restricted the grievant to duty that did not require him to lift his left arm, as of February 9, 2018.

On February 13, 2018, OWCP received the grievant's Form CA-1, Notice of Traumatic Injury from Management; and, on April 3, 2018, OWCP adjudicated the grievant "Accepted – COP Elected" and "Medical Benefits Only."

By email dated March 21, 2018, Krista Chechile, Manager Health & Resource Management, CT District, informed Peter Urbani, WPO Postmaster, in full: "Mehul Mehta, CCA is entitled to 26 hours per week while he is on limited duty or if OOW."

The record shows that the grievant submitted OWCP Form CA-7, Claim for Compensation, to Management on March 28, 2018; and, that Vincent Siniscalchi, Health & Resource Management Specialist, notified the grievant by letter dated April 9, 2018, that his Form CA-7 was incomplete and could not be processed and was being returned to him.

Postmaster Urbani testified that he mailed to HRM several CA-7s that he had received from the grievant. PM Urbani testified that he had twenty-six hours of limited duty available for the grievant at that time and that he could not offer more hours because he already had an FTR carrier working forty hours of limited duty at that time. Steward Pendola testified that Management told him that the grievant did not need to submit a CA-7, since he was already working on limited duty the 26 hours to which he was entitled.

The record further shows that OWCP first received a Form CA-7, Claim for Compensation, for the grievant, from Management, on May 17, 2018.

Steward Pendola testified that, after these cases had moved to arbitration, he recalculated the grievant's COP, per FECA Bulletin 13-03, using the grievant's "Everything Report" from date of hire to date of injury, and determined that the grievant had a weekly average of 33.29 hours for COP purposes.

Kevin Duplin, Health and Resource Management Specialist, testified that he was familiar with FECA Bulletin 13.03; that he wants to get CA-7s to OWCP as soon as possible; that CA-7s will be returned by OWCP if required elements, such as signature, date, and SSN, are missing; and that he does not like to see CA-7s returned by OWCP. HRM Specialist Duplin further testified that he helped the grievant fill out his Form CA-1, but did not assist the grievant in completing his Form CA-7. He also testified that he agreed with the Union's calculation of 33.29 hours for the grievant's COP Weekly Average of Hours, per FECA Bulletin 13-03.

On April 13, 2018, the Union filed the grievance in #18216391 and the grievance in #18216422. The grievances proceeded through the grievance procedure to arbitration.

Positions of the Parties

Union

The Union contends that Management did not provide the grievant continuation of pay; erroneously calculated the number of hours of COP; and, refused to submit CA-7's to OWCP for processing. The Union takes the position that computation of COP and wage-loss compensation for an injured CCA who has not worked as a CCA for at least eleven months are different; and, to calculate the hours of COP, that Management must use total pay earned during the one-year period prior to the injury (excluding overtime), divided by 52 weeks for the year prior to the injury (or prorate this if the employee had worked less than a year).

The Union argues that Management does not dispute that the grievant is entitled to COP for his injury; and, that the only disagreement is the number of hours per week the grievant should be provided limited duty, COP, or a combination of the two.

Management

With respect to #18216391, Management contends that an internal system is used to determine the minimum number of limited duty hours that Management must offer an injured CCA; that the system determined that the grievant was entitled to 26 hours; that the WPO could not offer more because an FTR carrier was already using forty hours of limited duty; and, that COP was not applicable, because the grievant was getting his required minimum of 26 hours of pay. In addition, Management argues that the Union's original alleged number of hours of work lost due to job injury is incorrect; that the Union has failed to prove that Management's calculation was incorrect; and, that the Union has presented no proof of a violation of the contract.

With respect to #18216422, Management takes the position that the issue is moot since Management was not required to do anything more than offer the grievant 26 hours of limited duty, Management did this, and submitting a Form CA-7 for COP was pointless.

Discussion

These two related cases are about the grievant's compensation during the time that he was recovering from his 2/2/18 injury at work. #6391 concerns whether or not the grievant was fully compensated under the contract and federal regulations. #6422 involves the procedure for filing a claim for compensation with OWCP and whether Management met its responsibilities within this procedure.

Article 21, Section 4, of the Nation Agreement requires Management to comply with OWCP regulations in dealing with employees injured at work. OWCP's 6/18/2013 FECA Bulletin 13-03 specifically addresses the CCA position with the purpose of informing appropriate Postal Service personnel of the procedures regarding COP and payment of compensation to injured CCA employees, in accordance with applicable federal regulations.

There is insufficient evidence in the record to support Management's position that the grievant was entitled to only 26 hours of injury-related compensation and that Management had fulfilled its OWCP obligation by offering the grievant 26 hours of limited duty weekly, as determined by an internal system. There is nothing in the case file regarding where this number came from, other than a one-sentence email message from the HRM Manager to Postmaster Urbani, that the "CCA is entitled to 26 hours per week while he is on limited duty or if OOW." While Management offered new documentary evidence at hearing that a "26.96" number was provided by HRM's Injury Compensation Performance Analysis System, there is no evidence in the record showing how the system generated this number or that this number was generated consistently with the requirements of FECA Bulletin 13-03.

FECA Bulletin 13-03 provides clear direction on how the weekly pay rate for COP is to be calculated. At hearing, in support of a remedy assuming the grievance was granted, the Union offered a COP calculation for the grievant based on FECA Bulletin 13-03 and historical records, and HRM Specialist Duplin appeared to accept the methodology used, as well as the results of Steward Pendola's efforts. His results showed a weekly average of 33.29 hours worked by the grievant over the eighteen pay periods prior to his injury, for a weekly pay rate for COP purposes of 33.29 hours.

While I am sympathetic to Management's predicament with already having an FTR carrier doing forty hours of limited duty due to a work injury at the time of the grievant's injury and not being able to offer the grievant any more than 26 hours of limited duty as a result, this did not excuse Management from paying COP for the additional seven-plus weekly hours to which the grievant was entitled, under the contract and FECA regulations.

Accordingly, I conclude that Management violated Articles 19 and 21, the Federal Employees Compensation Act, ELM and EL-505 when they failed to provide adequate limited duty work to a CCA injured at work and failed to properly compensate him through COP.

With respect to the second grievance, I am not persuaded by Management's argument that submitting a Form CA-7 for COP was pointless and that Management was not required to do anything more than provide the grievant with 26 hours of limited duty. To the contrary, it was essential for Management to submit the grievant's Form CA-7 to OWCP, so that the grievant

could fully recover the compensation he was losing as a result of his work-related injury. The fact that the grievant had some difficulty completing the Form CA-7 did not excuse Management from their responsibility under OWCP regulations and guidelines to submit the Form CA-7 to OWCP within five days of receipt from the employee.

Accordingly, I conclude that Management violated Articles 17, 19, 21 and 31, the Federal Employees Compensation Act, ELM and EL-505, when they failed to properly complete the appropriate sections of Form CA-7 and forward it to OWCP.

As the remedy for these violations, Management shall make the grievant whole by paying him 52.64 hours of COP as soon as administratively possible to do so (and no later than two weeks following the issuance of this award); and, Management shall submit the Form CA-7 to OWCP within 5 working days following the receipt of the Form CA-7 from the employee in compliance with the National Agreement and applicable law and regulations, in the future. This arbitrator will retain jurisdiction over these cases for thirty days following the issuance of this award for the sole purpose of resolving any issues with respect to the remedy.

AWARD

The grievances are granted.

As the remedy, Management shall: 1) make the grievant whole by paying him 52.64 hours of COP as soon as administratively possible to do so (and no later than two weeks following the issuance of this award); and, 2) submit the Form CA-7 to OWCP within 5 working days following receipt of the Form CA-7 from the employee in compliance with the National Agreement and applicable law and regulations, in the future.



James R. Collins