

C-24002

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JOHN J CASCIANO, NBA
NALC NEW ENGLAND REGION

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration) GRIEVANT: Lawrence Natale
Between) POST OFFICE: Waterbury, CT
)
UNITED STATES POSTAL SERVICE)
)
and) CASE Numbers:
NATIONAL ASSOCIATION OF LETTER) USPS: B98N-4B-C 01218915
CARRIERS, AFL-CIO) NALC: 013301
) GTS:31130
)

BEFORE: Sherrie Rose Talmadge, Esq., ARBITRATOR

APPEARANCES:

For the U.S. Postal Service:

James Carr, Labor Relations Specialist

For the Union:

Glen Aeschliman, Arbitration Advocate

Place of Hearing:

135 Grand Street, Waterbury, CT

Date of Contract:

2001-2006

Relevant Contract Provisions:

Article 13, LMOU Items 15, 16 and 17

Date(s) of Hearing:

December 11, 2002

Date of Award:

February 1, 2003

AWARD SUMMARY

Management did not violate Article 13 of the National Agreement, and page 4, Items 15, 16 and 17 of the Local Agreement, when they refused the Grievant light duty beyond six hours a day for the period July 16 – 28, 2001. Full-time employees on light duty are not guaranteed eight hours a day or forty hours a week of light duty work, and may be sent home before the end of their tour due to lack of work. The Service rebutted the Union's assertion that the Grievant was sent home after 6 hours of light duty work during the period July 16 – 28, 2001 because of budget restrictions. Moreover, the Service presented sufficient proof to conclude that there was no productive work for the Grievant to perform within his limitations during those two hours at the end of the day at a time when there was low mail volume. Accordingly, the grievance is denied.


Sherrie Rose Talmadge, Esq.
Arbitrator

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VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS

STIPULATED ISSUES

1. Did Management violate Article 13 of the National Agreement, and page 4, Items 15, 16 and 17 of the Local Agreement, when they refused the Grievant light duty because of budget restrictions?
2. If so, what shall the remedy be?

RELEVANT 2001-2006 CONTRACT ARTICLES, HANDBOOKS AND MANUALS

ARTICLE 13, SAFETY AND HEALTH

Section 1.B

The U.S. Postal Service and the Union...recognizing their responsibility to aid and assist deserving full-time regular or part-time flexible employees who through illness or injury are unable to perform their regularly assigned duties, agree to the following provisions and conditions for reassigning to temporary or permanent light duty or other assignments. It will be the responsibility of each installation head to implement the provisions of this Agreement within the installation, after local negotiations.

Section 2.C

Installation heads shall show the greatest consideration for full-time regular or part-time flexible employees requiring light duty or other assignments, giving each request careful attention, and reassign such employees to the extent possible in the employee's office. When a request is refused, the installation head shall notify the concerned employee in writing, stating the reasons for the inability to reassign the employee.

Section 3, Local Implementation (states in part)

C. Number of Light Duty Assignments.....The light duty employee's tour hours, work location and basic work week shall be those of the light duty assignment and the needs of the service, whether or not the same as for the employee's previous duty assignment.

LOCAL MEMORANDUM OF UNDERSTANDING

Item 15. THE NUMBER OF LIGHT DUTY ASSIGNMENTS WITHIN EACH CRAFT OR OCCUPATIONAL GROUP TO BE RESERVED FOR TEMPORARY OR PERNAMENT LIGHT DUTY ASSIGNMENT.

Temporary or permanent light duty assignments will be developed on an as needed basis by the union and management working together to implement the provisions of the National Agreement, Article 13.

Item 16. THE METHOD TO BE USED IN RESERVING LIGHT DUTY ASSIGNMENTS SO THAT NO REGULARLY ASSIGNED MEMBER OF THE WORK FORCE WILL BE ADVERSELY AFFECTED.

Light duty assignments will be created as needed from existing work duties, within the individual carrier's limitations, without reserving specific assignments. Therefore the regular work force employees will not be adversely affected.

Item 17. THE IDENTIFICATION OF ASSIGNMENTS THAT ARE TO BE CONSIDERED LIGHT DUTY WITHIN EACH CRAFT REPRESENTED IN THE OFFICE.

Within the carrier craft, the following will be considered light duty assignments if the carrier is able to perform them:

- | | |
|------------------------------|----------------------------------|
| A. Casing own route; | G. Router duties; |
| B. Assisting other routes; | H. Collections; |
| C. Relabeling carrier cases; | I. Verifying forwardable mail; |
| D. Updating forms 3982; | J. Labeling apartment mailboxes; |
| E. Auxiliary routes; | K. Answering telephones. |
| F. Delivery of Express Mail; | |

Any duties which the ill or injured employee may be able to perform without hazard to his/her health. Management will assign light duty assignments to any letter carrier capable of performing such duty.

FINDINGS OF FACT¹

Lawrence Natale, the Grievant, a letter carrier for over twenty-nine years, worked at the Brass City postal facility. At the end of May 2001 he severely sprained his ankle while remodeling his kitchen and could not work for the month of June. The Grievant returned to work on light duty, and from June 11 through July 16, 2001, he was working a light duty assignment for 8 hours a day. The Grievant was assigned to case mail and answer phones. As his limitations changed he would case mail, walk his route for four hours a day, and return to the office at 2:00 p.m. to case bulk mail for his route as well as other routes.

The Grievant testified that on July 16, 2001, Supervisor Pinto informed him that he would have to leave work after 6 hours of light duty because Postmaster Carl Johnson told Pinto that there were budgetary constraints. For the period July 16 through July 28, 2001, the Grievant performed his light duty assignment for six hours a day and had to take two hours of sick leave each day.

Steward Genova, a letter carrier for 28 years, testified that there were available carrier light duties available for the Grievant to perform for the additional two hours per day, among those listed in Item 17 of the LMOU. Specifically, he asserted that the Grievant could have sorted first and second class mail for his own and other overburden routes, cover for routers on their days off, verify mail that needed to be forwarded against their change of address forms (PS 3982), re-label carrier cases, and update apartment mailboxes and answer phones. The steward testified that there was about ten to twelve feet of mail to be verified for Route 1056 during the period in question.

Supervisor Customer Service Donald Pinto rebutted the testimony of the Grievant and the steward. Pinto testified that the Grievant only received six hours of

¹ During the hearing the parties had an opportunity to question witnesses under direct and cross-examination, and to submit relevant documentary evidence. At the close of hearing the parties presented closing arguments.

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light duty for the period of July 16 though 28 because there was no work available within his limitations; the mail volume had dropped off during July and August. Pinto also testified that on July 16, 2001 he did not receive a call from the Postmaster about budgetary restraints, and did not tell either the Grievant or the steward that he had received such a call from the Postmaster.

Pinto explained that the Grievant, while on light duty, was permitted to case both his own and other routes. Pinto testified that at the time there was no backlog of cases that needed labels because they had recently been completed, and there was no backlog of Form 3982 change of address cards. There was only one or two change of address cards per route each week that needed to be updated. Pinto explained that during this period the regular carrier for Route 1056 was out and the route was being covered by a hold down and maintained by a floater. The Post Office did not have any auxiliary routes, and they have an employee whose sole responsibility is to handle the express mail. The Waterbury Post Office has two employees performing router duties. If one of the routers is absent there is an employee who regularly covers that router's duties. One of the routers was on limited duty during this period, and was guaranteed eight hours a day even if there was not enough work. The Service used part-time flexible carriers to perform deliveries for the limited duty router, who put up two routes. In addition, there were two or three other carriers on limited duty during this period. Pinto stated that collections started at 2:30 p.m. and involved walking and bending, duties that would have been outside of the Grievant's limitations. Pinto also noted that during the period of July 16 through 28, there was no backlog of mail to be forwarded. Furthermore, there was no delayed mail during that period because of the light volume. Pinto added that there was no labeling of apartment boxes necessary to be completed at that time. Pinto emphasized that it would not have been efficient to keep the Grievant for two hours daily to answer phones, when the supervisors and other employees are also available to answer phones.

Pinto testified that from July 16 through 28 he gave the Grievant only six hours of light duty work per day because when the mail dropped off, there was not enough work to keep the Grievant at work. During mid-July to mid-August many companies shut down contributing to the low volume of mail. Pinto testified that he made an effort to assign the Grievant eight hours of light duty work on an as needed basis. He stated that during the summer they need more help with delivery than with casing. Thus, it was common to use part-time flexible carriers for hold-downs during the summer to cover the

Arbitration decision continued.

duties of regular carriers during the summer prime vacation period, especially to perform deliveries.

Supervisor Sharon Bernardo, who also works at the Brass City facility, testified that during the period July 16 through July 28 there was one occasion when she offered the Grievant an opportunity to stay beyond six hours to put up a case, but he declined. She also testified that each day she walked the routes, and did not recall any mail backup of Route 1056 during the two weeks at issue.

Although the Union submitted the ETC report of the part-time flexible (PTF) carriers indicating that some PTFs had worked overtime during this period, the report also indicated that many PTF carriers worked 8 or fewer hours during this period. Moreover, the report listed the part-time flexible carriers for the entire city and did not indicate which station the PTF carriers were assigned to work.

POSITIONS OF THE PARTIES

UNION'S POSITION

The Union argued that Management violated Article 13 and the LMOU when it failed to provide the Grievant with two hours of light duty per day for a two-week period because of budgetary restraints. Article 13 states that Management is required to make every effort in assigning light duty. The JCAM interpretation of Article 13 provides that "this language requires installation heads to make a bona fide effort to identify light duty work. If further requires management to give the matter "the greatest consideration" and careful attention". Management never made any type of effort, much less a bona fide effort to identify work for the Grievant. They just brushed him off stating "We do not have to create work."

Item 17 of the LMOU lists duties that are to be considered for light duty. The Union's witnesses testified that there were numerous duties the Grievant could have performed that were within the Grievant's medical restrictions, including casing on routes and going over the backed up mark-up mail on routes for which the regular carriers had been on vacation (Rt. 1056). Management refused to allow the Grievant to perform the available light duty and sent him home after six hours.

The Union requested that the grievance be sustained, and the Grievant be made whole by requiring the Service to credit his sick leave balance for the hours of sick leave he was required to use from July 16 through July 28, 2001.

Arbitration decision continued.

POSTAL SERVICE POSITION

The Service argued that the Union did not meet its burden of proving a contractual violation. The Local Agreement states that light duty assignments are developed on an "as needed basis" and without reserving specific assignments. The JCAM quotes National Arbitrator Mittenthal stating "...that full-time employees on light duty are not guaranteed eight hours a day or forty hours a week of light duty work. They may be sent home before the end of their tour due to lack of work." Thus, the Service argued, the parties intended for light duty assignments to be productive and when there is no productive work, there is no obligation for management to provide light duty by relying on "make work" assignments.

Management contended that it is not under any obligation to "create work" to guarantee the Grievant eight hours of light duty. Management never stated that "budget restrictions" was the reason that the Grievant worked six hours of light duty. There were no contractual provisions preventing management from working PTFs over light duty carriers or requiring management to reduce PTF hours to provide light duty work, as is required of casuals. Especially when PTF employees are capable of performing duties the Grievant was unable to perform.

The documentation that the Union provided established that on every day many PTF employees did not work at all, and several worked less than eight hours. PTF employees who were used performed street delivery duties not office duties.

Furthermore, the Union has not proven that there was sufficient and available work for the Grievant to work light duty assignments beyond the six hours he already worked. Management's witnesses established that the Grievant worked as needed and in compliance with the contractual provisions. Management's actions were not arbitrary or capricious. Consequently, the Union's grievance should be denied.

DISCUSSION

I find that the Union did not meet its burden of proving that Management violated Article 13 of the National Agreement, and Items 15, 16 and 17 of the Local Agreement, when they refused the Grievant light duty beyond six hours a day for the period July 16 through 28, 2001.

Article 13, Section 2.C of the National Agreement states that installation heads shall show the greatest consideration for full-time regular or part-time flexible employees requiring light duty, giving each request careful attention and reassigning such employees to the extent possible in the employee's office. Article 13, Section 3.C states in part that

Arbitration decision continued.

"The light duty employee's tour hours, work location and basic work week shall be those of the light duty assignment and the needs of the service, whether or not the same as for the employee's previous duty assignment." Thus, the National Agreement permits the Service to balance the full-time regular employee's request for light duty with the "needs of the service". National Arbitrator Mittenthal has addressed the Service's responsibility for providing light duty assignments to full-time employees. [H1C-4E-C 35028, June 12, 1987 (C-00935).] Mittenthal held that full-time employees on light duty are not guaranteed eight hours a day or forty hours a week of light duty work, and may be sent home before the end of their tour due to lack of work. (See JCAM – September 2000, p. 13-5.)

In Waterbury, the parties' Local Memorandum of Understanding provides in Item 15 that "Temporary or permanent light duty assignments will be developed on an as needed basis by the union and management working together to implement the provisions of the National Agreement, Article 13."

After the Grievant returned to work from injuring his ankle, the Service accommodated the Grievant's light duty request and was able to provide eight hours of work per day, within his limitations, for the period June 11 through July 16, 2001. However, the Service's witnesses credibly testified that because of the low volume of mail during that time of the summer, Management did not have sufficient duties available within the Grievant's limitations to keep him at work beyond six hours during the two week period from July 16 – 28, 2001.

The Union argued that the actual reason for the reduction in hours was the Service's asserted budgetary constraints, and that there were sufficient duties available for the Grievant to perform. However, Supervisor Pinto denied informing either the Grievant or the steward that the reduction in hours was due to budgetary constraints. Pinto credibly testified that the Postmaster had not told him to reduce the Grievant's hours because of budgetary constraints. Significantly, both Pinto and Bernardo maintained that the lack of available work, and not the budget, was the reason that the Grievant was sent home after six hours of light duty.

The Union did not present sufficient evidence to substantiate their claim that there were sufficient light duty assignments available for the Grievant to work beyond the six hour period. In contrast, the Service presented evidence that they assigned the Grievant "as needed" to perform 8 hours daily of light duty assignments, however for the last two weeks in July, when the mail volume dropped, there was not enough work to keep the Grievant beyond six hours. Pinto testified that from mid-July to mid-August many companies shut

Arbitration decision continued.

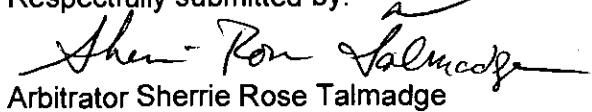
down contributing to the low volume of mail. He stated that during the summer they needed more help with delivery than with casing, and the Grievant had been assigned casing duties and the four hours of daily street time permitted within his limitations. Part-time flexibles were used for hold-downs to cover the duties of regular carriers during the summer prime vacation period. Of the light duty assignments listed in Item 17, Pinto assigned the Grievant to casing his own route and assisting other routes. However, Pinto testified that the office was up to date with re-labeling carrier cases, and there were few forms 3982 to update. He pointed out that there was a carrier whose bid was to deliver express mail, and thus, they did not need the Grievant to perform those duties. Moreover, there were two routers to handle router duties, and one of them who was on limited duty, was contractually entitled to eight hours of work. During this period Pinto noted that there was little forwardable mail to verify, and regular carriers' preferred to label their own apartment mailboxes, so that those duties were not available for the Grievant. Furthermore, collections involved bending and walking outside of the Grievant's limitations. Pinto noted that the supervisors and other employees on limited duty were available to answer telephones, and thus it was not productive to keep the Grievant at the office for two hours for that purpose. Supervisor Bernardo substantiated Pinto's testimony.

Thus, I find that the Service's decision was not arbitrary or capricious in concluding that there was insufficient productive light duty work available for the Grievant to perform, within his limitations, during those two hours at the end of the day at a time when there was low mail volume. Therefore, the Service did not violate the National Agreement or the LMOU by its actions. Accordingly, the grievance is denied.

AWARD

Management did not violate Article 13 of the National Agreement, and page 4, Items 15, 16 and 17 of the Local Agreement, when they refused the Grievant light duty beyond six hours a day for the period July 16 – 28, 2001. Full-time employees on light duty are not guaranteed eight hours a day or forty hours a week of light duty work, and may be sent home before the end of their tour due to lack of work. The Service rebutted the Union's assertion that the Grievant was sent home after 6 hours of light duty work during the period July 16 – 28, 2001 because of budget restrictions. Moreover, the Service presented sufficient proof to conclude that there was no productive work for the Grievant to perform within his limitations during those two hours at the end of the day at a time when there was low mail volume. Accordingly, the grievance is denied.

Respectfully submitted by:


Arbitrator Sherrie Rose Talmadge