

C#09415

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

NATIONAL ASSOCIATION OF LETTER
CARRIERS

) GRIEVANT: S. Matchette

) POST OFFICE: League City, TX

) CASE NO: S4N-3V-C 62368

BEFORE: Robert G. Williams, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Dan Heeth

For the Union: D.R. Beasley

Place of Hearing: League City, TX

Date of Hearing: September 19, 1989

AWARD:

The Grievance is hereby sustained in accordance with the opinion. The Grievant shall be compensated for forty (40) hours at straight time rates. This Arbitrator retains jurisdiction in the event disputes arise regarding the implementation of this award.

Date of Award:

October 5, 1989

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JOE Z. ROMERO
NATIONAL BUSINESS AGENT
U.S. L.C.
DALLAS REGION #10

Robert G. Williams

I. BACKGROUND

This case arose under the National Agreement effective from July 21, 1987 to November 20, 1990. The Service denied the Grievant's request for Administrative Leave for Civil Defense Training. He protested this denial, filed his grievance on August 22, 1987 and properly processed his case to this arbitration. An arbitration hearing was held September 19, 1989 in League City, Texas. The parties stipulated undisputed facts, called and examined witnesses and argued their respective positions. The issue presented at the hearing was as follows:

Did the Service violate
the Agreement when it denied
the Grievant's Administrative
Leave for Civil Service
Training and, if so, what shall
be the remedy?

The hearing was closed following the oral arguments of the parties.

II. FINDINGS

The Grievant in this case was a Regular Carrier in League City, Texas. In addition, he was an experienced and active participant in Civil Defense programs in his community for many years. His recent experience includes holding the position of Assistant City Coordinator for Civil Defense in

League City. As part of his commitment to the Civil Defense organization, the Grievant participated in training programs called the "Professional Development Series" (PDS) which consisted of four (4) courses. One of these courses was scheduled to be held from August 3 through 7, 1987 in Austin, Texas. This course would take thirty-two (32) hours of work and another eight (8) hours of travel time away from the Service. The Grievant applied for administrative leave for this time off by filing his 3971 under PSDS 384, Civil Defense. The parties stipulated the Grievant complied with the requirements of PSDS 384 with one exception. According to the local Postmaster, the Grievant could not be spared for these forty hours. He, therefore, declined the Grievant's request for administrative leave. At the time this facility had twenty-one (21) routes to be manned by twenty (20) Regular Carriers and six (6) or seven (7) Part Time Flexibles (PTFs).

Faced with this refusal to grant administrative leave, the Grievant converted his 3971 to a request for annual leave. The Local Memorandum of Understanding requires the granting of annual leave when such requests do not exceed 14% of the workforce. Since this limit had not been reached for the time of the training course and travel time, the Grievant's annual leave request had to be granted. He then attended the program

in Austin, Texas. He now claims pay for his seminar and travel time under PSDS 384, Civil Defense.

III. POSITIONS OF PARTIES

The Grievant contends he is entitled to pay for the forty (40) hours under PSDS 384. He met all of these requirements including the requirement that he could be spared from his work. The Postmaster is required to grant annual leave requests up to 14% of the workforce. He is required to plan for this contingency. The 14% was not a limitation during the period of this seminar so the Grievant could be spared. If the 14% had been reached, of course, the requests for administrative and annual leave could be rejected. The Grievance must be sustained.

Management, on the other hand, contends PSDS 384, Civil Defense, is not a guarantee. The conditions are set out in 384. One of those conditions is whether an employee can be spared. This decision is one of Management discretion. The outlined conditions are "eligibility" requirements, not an automatic guarantee. The Grievant's first obligation is to the Postal Service. The grievance, therefore, must be denied.

IV. DISCUSSION

Article 19, Handbook and Manuals, of the National Agreement includes PSDS 384, Civil Defense:

384 Civil Defense (See ELM 519.23)

384.1 Definition. Eligible full-time employees who volunteer and are selected by state or local authorities for civil defense assignments are authorized by their installation head to participate in pre-emergency training programs and test exercises conducted by the state or local government. Participation in these activities during the employee's regularly scheduled tour of duty for not more than 40 hours in any one leave year will be considered as part of the employee's regular duties and will not be charged to Annual or Sick Leave. This time is to be charged to Civil Defense Leave.

384.3 Authorization and Supporting Forms

.31 Supervisor approval to participate in civil defense activities is subject to the following tests:

a. The employee's participation has been requested by the state or local civil defense authorities.

b. The employee can be spared from his regular duties for the required periods of participation.

c. The employee can reasonably be expected to be available for assignment to civil defense activities in the event of an emergency.

.32 Employees are responsible for initiating Form 3971 for each period of time that they expect to be absent from work while participating on an approved civil defense activity.

.33 Upon return to duty, the employee will be required to submit a written statement from the state or local civil defense authorities to his supervisor showing the days or hours of his participation. If the employee does not provide this statement or if the statement does not support the leave request that was approved on Form 3971, then the employee must be charged with Annual Leave of Leave Without Pay.

This language is controlling in this case.

This language is clear and unambiguous on its face. It establishes the eligibility criteria for civil defense leave. The Grievant has met the criteria including the requirement that he could be spared from his regular duties. This latter criteria as well as 384.31(c), however, are difficult to determine because a Supervisor is required to predict future conditions. He must predict whether an employee can be spared from his regular duties for a definite period and/or an indefinite period for an emergency in the future. If Management delays making a determination, an employee may lose his opportunity to be eligible for annual leave.

Management, therefore, must make a decision within sufficient time to allow an employee to apply for annual leave as was done in this case. Now, Management can look back and recognize the Grievant could have been spared. His request, therefore, should be granted. Other employees who had submitted competing annual leave applications that were rejected have no claim. The annual leave 14% limitation properly barred their request at the time it was submitted. The fact that the Grievant's annual leave later was converted to civil defense administrative leave does not resurrect the leave granting and denying process. It was properly administered at the time. This time cannot be re-lived for prior annual leave applicants.

V. AWARD

The Grievance is hereby sustained in accordance with the opinion. The Grievant shall be compensated for forty (40) hours at straight time rates. This Arbitrator retains jurisdiction in the event disputes arise regarding the implementation of this award.

This the 5th day of October, 1989.

Robert M. Williams