C #10937

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration between UNITED STATES POSTAL SERVICE and NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	GRIEVANT: Class Action POST OFFICE: Memphis, TN CASE NO: S7N-3C-C 36361 (GTS 004573)

BEFORE: James F. Scearce, ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: George Whitten, Labor Relations Rep. (Presenting)

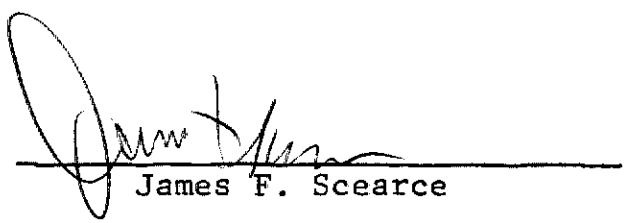
For the Union: G. E. Cruise, Regional Adm. Asst. (Presenting)

Place of Hearing: MPO, Memphis, Tennessee

Date of Hearing: June 6, 1991

Award:

Grievance is denied, but with reservations set out in the Discussion and Findings as to the applicability of existing resolutions.



James F. Scearce

Date: July 5, 1991

BACKGROUND

The events in this case occurred at the Highland Station -- part of the Memphis (TN) postal system -- and involves a dispute over the application of "Choice Leave" provisions set out in Part 510 of the Employee and Labor Relation Manual (ELM) and Local Memorandum of Understanding (LMU) in effect between Branch 77 of the Union and the Service at Memphis, Tennessee. On specific point here is a dispute over the counting of two (2) carriers who were called to active duty as part of Operations Desert Storm/Shield, as part of the percentage/number (14%/6) of carriers who would be allowed off at any given time during the "Choice Vacation Period" (January 1 - November 30, 1991). The record shows that the carriers (R. Webber and R. Nelson) were activated in early December of 1990 and coincidental with such event the Service management at Highland Station was scheduling choice leave for 1991. Two (2) of the six (6) potential slots for the choice vacation apparently were dedicated to Webber and Nelson's absence for the year (or period of active duty, if less).

A grievance was initiated on December 18, 1990 contesting the Service's decision to reduce the number of available slots; it was formalized on December 21, 1990 and a Step 2 hearing was held on January 30, 1991 wherein the Union set out its position and demands. Lack of timely Step 2 response prompted the Union to move the grievance to Step 3 on February 15, 1991; a denial by the Service at that Step resulted in the case being certified to arbitration.

POSITION OF THE UNION

The Service violated Article 10 of the Agreement and the LMU when it did not allow six (6) carriers the opportunity to use accrued leave during the Choice Vacation Period in 1991. It improperly blocked two such slots for two carriers who were activated to participate in Operation Desert Storm and Operation Desert Shield. The Service improperly applied Part 517 of the ELM to the status of carriers Nelson and Webber. Both employees lost pay during such circumstance and were not absent from duty for training as contemplated by Part 517, and since this provision called for it, the Union attempted to have Nelson and Webber fully compensated in their absence; the Service refused, which gives support for the Union's position. The result was a denial of the rights of other carriers to the use of the opportunity to the selection of planned vacations. The carriers who were denied requests for leave as a result of the Service's actions should be compensated at the overtime rate for all work performed during the periods denied; carriers whose choice periods have not yet occurred should be granted and the Service instructed to cease and desist from such practice.

POSITION OF THE SERVICE

The ELM, at Part 517, clearly provides for the situation that exists here. Nelson and Webber were called to active duty due to the Middle East war. Paragraph 13 of the LMU recognizes that 14% of the work force may be granted leave at a time and that employees in military leave are specifically counted as part of the 14%. This matter was addressed and disposted of favorably to the Service in Case S7N-3C-C 24284 at

Columbus, Mississippi by Arbitrator R. G. Williams; the same result should derive here.

CITED/RELEVANT PROVISIONS OF THE AGREEMENT AND RELATED DOCUMENTS

AGREEMENT

ARTICLE 10 - LEAVE*

ARTICLE 19 - HANDBOOKS AND MANUALS*

(Jt Ex 1)

LOCAL MEMORANDUM OF UNDERSTANDING

Par. 13. The letter carrier vacation period will be from January 1 through November 30. At least 14% of the letter carrier force in each Post Office will be granted annual leave at any given time, if requested. The 14% will include, Annual Leave, Military Leave, Convention Leave, OWCP, and Long-term Sick Leave where it can be reasonably projected that employees who are on such leave will not be available to work in the delivery unit where leave is requested. Leave shall not be denied on the speculation that sick leave might be required.

(Jt Ex 4)

EMPLOYEE & LABOR RELATIONS MANUAL

517 MILITARY LEAVE

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.

517.121 Duty Covered

a. Active duty, field, coast defense training.

517.643 Choice of Annual Leave or LWOP. Eligible employees who volunteer, or are ordered, for a period of military training or for a period of active military duty beyond the 15 calendar day period chargeable to military leave, may use annual leave at their option, or LWOP.

(Jt Ex 5)

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*Not reproduced here for sake of brevity.

THE ISSUE

Did the Service violate the Agreement, LMU or related regulations when it counted the absence of two carriers called to active duty in the 14% allowed off on annual leave during the 1991 Choice Vacation period; if so, what is the appropriate remedy?

DISCUSSION AND FINDINGS

The Service incorrectly cites a prior arbitration Award at Columbus, Mississippi (identifed hereinbefore), which was issued March 2, 1990 in its assertion that it should be dispositive of this dispute. While noting that it was a regional arbitration case and thus lacking precedent-setting value, I would also offer the observation that it is not squarely on point with this dispute. That case dealt with the scheduling of an employee's military leave in the incidental leave record and was for military training (15 days) whereas this one deals with a call to active duty for indefinite period related to at least the potential for combat service. But while that case (S7N-3C-C 24284) is not directly relevant here, another dispute at the same location (Columbus, Mississippi) handled by the undersigned (S7N-3C-C 35322) in May of 1991 is squarely on point. And, I must come to the same conclusion here with the same reservations as expressed in that case.

Essentially, I found (and I find) that Part 517 of the ELM is contradictory in its terms and appears to have been prepared with absences of employees to attend training exercises

in mind. Indeed, the words "training," "drills," and/or "meetings" dominate this regulation. References are made to "active duty" without explanation: it stands to reason that an employee who volunteers to return to active duty would not be factored into the percentage allowed off for choice vacations periods; the Union also points out that Nelson and Webber lost pay and continued to do so contrary to 517.11. On the other hand, in response to the Union's query as to why Nelson and Webber were not placed in LWOP status -- which, per the Union, would have excluded them from the 14% computation in their absence -- the Service asserts that such employees would have lost health benefits and possibly a clothing allowance. My conclusions were then (and continue to be) that Part 517 was not prepared with the events that culminated in the Middle East crisis in mind. This case is about the rights of employees allegedly being disadvantaged by the call to duty of other employees and not about the latter. A fair question can be raised as to how long the Service would be inclined to attempt to carry on its mission in the absence of Nelson and Webber before supplementing the work force (for example, by casuals). Or, what if eight (8) instead of two (2) carriers had been called to duty at Highland Station?

As indicated previously, I cannot affirm the Union's position in this dispute and particularly the remedy being sought. As in S7N-3C-C 35322, Part 517 of the ELM is the only source of authority upon which guidance can be relied, even though the term "active duty" does not comport with other

circumstances, particularly that provision related to "absence ...without loss of pay." It is not within the arbitrator's ambit of authority to rewrite regulations. For such reasons, I must find the Issue to be answered in the negative.