

C-24968

REGULAR ARBITRATION PANEL

	)	GRIEVANT: Hale
	)	
UNITED STATES POSTAL SERVICE	)	POST OFFICE: Chatsworth, CA
	)	
and	)	CASE NO. F01N-4F-C 03119483
	)	
NATIONAL ASSOCIATION OF	)	DRT. NO: 01-45332
LETTER CARRIERS, AFL-CIO	)	
	)	
	)	

BEFORE: Nancy Hutt

APPEARANCES: Postal Service: Theresa Fleming

Union: Robert Ortiz

PLACE OF HEARING: Chatsworth, California

DATE OF HEARING: November 5, 2003

DATE OF AWARD: January 16, 2004

CONTRACT YEAR: 2001-2006

TYPE OF GRIEVANCE: Article 14

AWARD: The grievance is sustained. Management violated Article 14 of the National Agreement when Grievant was ordered to perform work that was unsafe for her prior injuries. Grievant is entitled to have the sick leave she used on March 27, 2003, restored to her.

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Nancy Hutt

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I.

**INTRODUCTION**

As parties to a collective bargaining agreement, the Union and Postal Service submitted this matter to arbitration after completion of the pre-arbital process. Both parties were afforded a full opportunity to present evidence and argument and to examine and cross-examine witnesses. The arbitrator swore in all witnesses appearing for examination under oath.

The record consists of Management exhibits, Union exhibits, and joint exhibits. The evidence of the parties and was set forth at the hearing. Upon receipt of the Awards, the record was closed.

II.

**STIPULATED ISSUES**

Did Management violate the National Agreement and did it send Ms. Hale home on March 27, 2003, after working 2.53 hours at the Chatsworth Post Office? If so, what is the remedy?

III.

**RELEVANT CONTRACT PROVISIONS AND REGULATIONS**

**ARTICLE 3 – MANAGEMENT RIGHTS**

The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

- A. To direct employees of the Employer in the performance of official duties;

- B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;
- C. To maintain the efficiency of the operations entrusted to it;
- D. To determine the methods, means, and personnel by which such operations are to be conducted;
- E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and
- F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

(The preceding Article, Article 3, shall apply to Transitional Employees.)

## **ARTICLE 14 - SAFETY AND HEALTH**

### **Section 1. Responsibilities**

It is the responsibility of management to provide safe working conditions in all present and future installations and to develop a safe working force. The Union will cooperate with and assist management to live up to this responsibility....

### **Section 2. Cooperation**

The Employer and the Union insist on the observance of safe rules and safe procedures...

\* \* \* \*

If an employee believes he/she is being required to work under unsafe conditions such employee may:

- (a) notify such employee's supervisor who will immediately investigate the condition and take corrective action if necessary;

## **IV.**

### **STATEMENT OF THE CASE**

The Grievant has 26 years of service at the Chatsworth Post Office. For at least the last ten years, she has been Chief Shop Steward. Grievant has had neck surgery and

surgery on both arms and legs. On the day in question, March 18, 2003, Grievant was collating her pennysaver coverage behind each address flat during the pull down portion of office time. Grievant followed this process for fifteen (15) years in order not to handle another tray. She works from the middle so her injuries are not exacerbated by reaching and stretching. Grievant was instructed to handle the coverage as set forth in the M-41. Grievant explained to management that reaching for the third tray caused her considerable pain by the end of the day in her back and neck. Grievant was instructed to obtain medical documentation to substantiate her requirement to deviate from the normal practice.

Grievant went to the doctor on March 24<sup>th</sup> and informed the Service the next day her doctor would send the note as soon as it returns from the transcriber. March 26<sup>th</sup>, Wednesday, was the next coverage day. The Supervisor suggested Grievant phone her physician to have the note faxed. When she phoned, the nurse advised Grievant she would request the doctor to fax a note. While Grievant was pulling down on the 26<sup>th</sup> she was approached by the Supervisor and Steward Anderson. Grievant was given a direct order to follow the procedures of the M-41 for the third bundle. Steward Anderson confirmed this order. Grievant explained her medical condition and refused to handle the mail in a manner that would hurt her body. Steward Anderson and Grievant testified the Supervisor instructed Grievant to go home if she could not carry the third bundle. However, the Postmaster determined the pennysavers would be held to the next day when hopefully the medical documentation would arrive at the Post Office. This delayed the mail.

On March 27, the Post Office did not receive the documentation from Grievant's physician. She was instructed to follow the procedure in the M-41. At that point, Grievant, the Steward, and the Supervisor went into the Postmaster's office. The Postmaster instructed Grievant to follow her supervisor's instructions. Management was again advised that the manner set forth in the M-41 was an unsafe way for Grievant to process her mail because the reaching caused harm. Grievant testified she was informed if she did not follow the M-41 then there was nothing for her to do at work. The discussion went back and forth in the office. According to the Steward, the conversation was redundant when Grievant left with no mention of any potential duties Grievant could perform that day. Grievant, who was upset and frustrated, completed a Form 3971 that stated, "Instructed to deliver in an unsafe manner. Harassed to the point of irritating her I.C. condition". The Postmaster testified Grievant did not indicate she was leaving work when she "stormed" out of the office and did not request permission. Grievant was charged sick leave and did not receive discipline.

The next day, March 28, 2003, the note arrived from Grievant's doctor. It stated in full:

Mrs. Hale has been a patient of mine for over 25 years. Mrs. Hale has explained her duties and I feel that due to previous neck injuries in 1995 and back in 2002 and her carpal tunnel in 1986 and avoid any further exacerbation to her injuries it is in her best interest to alter the system in her truck, therefore, the collating of her coverages is necessary she does not have to lean so far to either side. This would alleviate any further damage to the body. When she has to stretch longer distances, she has aching pains from constant vertebral angles.

The Postmaster pointed out the medical note recommends a pre-emptive method, rather than a specific restriction. The manner of handling the mail on a mounted route is not intrinsically unsafe, but the Grievant, according to the Postmaster wants to avoid a potential exacerbation of her medical conditions. The Postmaster testified the documentation failed to point out that the method was a safety or health violation for Grievant. However, Grievant was granted permission to continue collating as she had in the past upon receipt of the medical note.

There was testimony from the Grievant and the Postmaster concerning the manner that Grievant used to collate. Grievant testified the process she uses in the office takes ten (10) to fifteen (15) additional minutes, but saves her approximately 30 minutes on the street. The Postmaster testified she was trying to improve office efficiency and that the additional handling of mail by Grievant was inefficient, which added fifteen (15) minutes to her office time on the two coverage days.

V.

#### POSITION OF THE PARTIES

##### Union<sup>1</sup>

The Union contends the Service violated Articles 3 and 14 of the National Agreement when it refused to allow Grievant to collate in a safe manner. All employees are required to work in a safe manner and to take precautions not to injure themselves. Grievant was a 25- year veteran who credibly testified the manner mandated in the M-41

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caused pain to her numerous injuries. Grievant attempted to provide timely medical documentation to support her claim, but the doctor's office was not cooperative. When the Service refused to allow Grievant to collate using the process that required less stress on her injuries, a violation occurred with respect to Article 14. It is unreasonable and arbitrary for the Service not to wait for the medical documentation.

The language in Article 14 regarding safety sets forth a mutual obligation on the parties to protect the employees. Grievant was not afforded alternative duties and the evidence supports the Postmaster did not suggest an option to the Article 41 instruction. Moreover, the Postmaster admitted that Grievant would not have lied about the harm the third bundle caused her body. Grievant had no choice, but to leave the work location rather than to pull down in violation of her personal safety. If management had waited for the medical document from her doctor, which arrived the next day, the grievance would not have been filed. Grievant has been collating without the third bundle since the date the medical documentation arrived at the Post Office.

The Union requests the following remedy: The Employer be ordered to cease and desist from violating Article 14 of the National Agreement and Grievant be re-credited her sick leave.

#### **Postal Service**

The Postal Service contends management did not violate Article 14 of the National Agreement. Grievant was instructed to follow the method utilized by the office as set forth in the M-41, which is not an unsafe procedure. At no time did Grievant attempt to comply with the instruction. Rather, she refused to engage in the mandated

process based on a speculative pain that may occur in the future. The evidence supports the position of management that the procedure is not inherently unsafe. Even though for 15 years Grievant engaged in the two- bundle system, she now has a different route with different requirements. The instruction to follow the M-41 was not a violation.

The parties agreed the Grievant was not specifically ordered to go home. (Joint 2, p. 7) Grievant elected to go home before the meeting in the Postmaster's office had ended. In any event, the Service had provided Grievant sufficient time for her medical note. The Union suggests that management accommodate Grievant until the note arrived, which is unreasonable. When the note from her physician was faxed to the Service, it did not place specific restrictions on the Grievant, but suggested a preventive measure to avoid pain. Grievant elected to go home without authorization in violation of the expectations of Management. The Service requests the grievance be denied in its entirety.

## VI.

### DISCUSSION

The record demonstrates a violation of Article 14 of the National Agreement. In the present case, Grievant had collated her mail for 15 years and had a reasonable and legitimate expectation she would continue in this fashion. The Grievant provided unrefuted testimony the process she used did not add time to her day and during route inspections the procedure utilized by Grievant had not been found as a time wasting practice. It was undisputed that Grievant had surgery on numerous parts of her body over the years, which caused pain when not protected. Grievant certainly knew how to treat

her body in the manner that safely provided her a pain-free working environment, without jeopardizing the efficiency of Postal Service operations.

Grievant made every attempt to provide medical documentation in a timely fashion. Management had no reason to believe it would not be forthcoming, but rather than wait another few days, Grievant was ordered to follow the M-41 as instructed by her Supervisor. This was not a responsible decision on the part of management. Grievant got irritated after discussing this endlessly in the Postmaster's office according to the Steward and Grievant. Based on the testimony, I find no options were provided Grievant other than performing as instructed. Grievant knew if she followed the instruction she would injure herself. There was no evidence to substantiate that waiting for the documentation, after Grievant's use of this process for 15 years, would cause a hardship on the Service. The parties to this conflict were stubborn to the detriment of Grievant, who viewed leaving work her sole option to prevent injury. Accordingly, the Service violated Article 14.

## VII.

### AWARD

Management violated Article 14 of the National Agreement when the Grievant was ordered to perform work that was unsafe for her prior injuries. Grievant is entitled to have the sick leave she used on March 27, 2003, restored to her.

  
Nancy Hutt

DATED: January 15, 2004  
San Francisco, CA