

RA-860-A-75
Jule Swartz
New London, CT
NCN 4174

C3007

In the Matter of the Arbitration between :

Case No. NC-N-4174
J. Swartz
New London, CT.

NATIONAL ASSOCIATION OF LETTER CARRIERS, :

-and-

UNITED STATES POSTAL SERVICE :

OPINION AND AWARD

APPEARANCES:

For the USPS - F. J. Boughan, District Director, E & LR

For the NALC - John Marco, National Business Agent

BACKGROUND:

This grievance, filed on behalf of J. E. Swartz, was duly processed pursuant to the pertinent provisions of the then current collective bargaining agreement. The case was then processed for arbitration before the Undersigned, by jointly-signed letter dated March 19, 1979, and was heard in Hartford, Connecticut, on April 6, 1979. The Grievant was present throughout the hearing, and he testified in his own behalf. Subsequent to the close of the hearing, by agreement of the Parties, additional documentation was submitted, and this documentary evidence and argument was also duly considered.

THE ISSUE:

Did the USPS violate certain cited provisions of the collective bargaining agreement by failing to permit this Grievant to return to work on June 11, 1976, and remain at work until October 19, 1976? If so, what shall the appropriate remedy be?

INTENTIONS OF THE PARTIES:

In the grievance filed by the Secretary of Branch No. 5722, on behalf of Mr. Swartz, the Union alleged that Management refused to allow Swartz to be placed on active duty status after he attempted to come back to work, after a work related injury, and the Grievant had presented a letter from a doctor indicating that he was fit to return to work. The Union requested that Mr. Swartz be permitted to return to work, at that time, and made whole for the days which he lost since June 11, 1976. Subsequent to the filing of this grievance, for other unrelated reasons, Swartz was no longer considered an employee of the Postal Service, and the Union's make-whole remedy was limited to the period ending October 19, 1976.

The position of the Postal Service was that the decision of Swartz' Postmaster in Groton, Connecticut, was correct when he refused to permit Swartz to return to work on June 11, 1976, and that decision did not violate any provision of the Agreement or any other controlling law or regulation.

STATEMENT OF THE CASE:

In the two years immediately preceding the incident which gave rise to this grievance, Mr. Swartz had incurred a work related injury. He underwent surgery to correct the condition caused by the injury. During the time that he was absent from work, Swartz was compensated, pursuant to the Agreement and appropriate law and regulations, and the USPS paid for his medical treatment.

In June of 1975, after the back operation referred to above, Mr. Swartz returned to work. He worked intermittently on light duty until August of 1975. After that he worked at his regular assignment

until early in January of 1976, when he^o was once again unable to work because of his back injury. Disability retirement proceedings were initiated by the Postmaster on April 27, 1976. This followed a fitness for duty examination which Mr. Swartz underwent, at the direction of Postal Authorities, at the New Haven Post Office on March 12, 1976. That examination, given by a Dr. Anthony Scialla, who is a medical doctor hired by the Postal Service to perform various medical duties in the Connecticut Valley and in Massachusetts. Dr. Scialla concluded, based upon his examination, and the patient's previous medical history, that he was unfit to perform the duties of a letter carrier. That information was forwarded to Swartz' Postmaster.

Prior to this fitness for duty examination, Mr. Swartz was examined by his personal physician, at the time, a Dr. Cooper, who indicated that he was not capable of performing his regular duties as a letter carrier although he could carry on light work. This doctor referred him to a Dr. Jones for further efforts at rehabilitation. At the time that Dr. Scialla examined Swartz, he was unaware of Dr. Cooper's diagnoses which apparently matched his own.

Mr. Swartz did not agree to join in the efforts initiated by the Postmaster to secure a disability retirement for him. He went to see Dr. Jones, to whom he had been referred by Dr. Cooper. Dr. Jones put him in the hospital on May 27, 1976, and prescribed bed rest, medicines and a special diet. He was released from the hospital about one week later. On June 11, 1976, Mr. Swartz presented himself at the Post Office and attempted to go to work. Mr. Swartz presented the Postmaster with two letters from Dr. Jones. The first was dated

April 20, 1976, and stated Swartz had to be hospitalized. He also said that, after undergoing a therapeutic regime for 2 and one-half to three weeks, Swartz would be fit to return to work and handle regular duties as a Postman. The second note from the doctor was dated June 10, 1976, and was unsigned but contained a stamp with the doctor's name and address on the bottom. It stated that J. Swartz was fit to resume his regular job as of June 11, 1976.

Sometime, around July 29, 1976, after Swartz had been showing up regularly at the Post Office and demanding that he be put back to work on the basis of the letters he had produced from his personal physician, the Postmaster at Groton called Dr. Scialla to arrange to get Swartz a fitness for duty examination. At about that time, Dr. Scialla was also furnished with the letters that Swartz had given to the Postmaster from Dr. Jones.

Dr. Scialla believed, according to his testimony, that Dr. Jones's medical evaluations and his own were in conflict. He wanted another medical evaluation of Swartz and copies of the medical records which Dr. Jones had compiled on his patient. Dr. Scialla was of the opinion that Swartz should not return to work until that additional medical evaluation was conducted. The Postal Service's liability to Swartz, in the event he reinjured himself or aggravated his injury on the job, was too serious, according to the USPS physician, for Swartz to go back to work without further medical evaluation. He wanted a third opinion, or a tie-breaker, as he put it. For that reason, he scheduled Swartz for a fitness for duty examination on August 5, 1976. It was rescheduled for August 6, 1976.

Swartz did not show up for the examination on August 5, 1976, because he claimed he had a headache, and, in any event, he provided

the Postal Service with evidence of his fitness for duty. As to the rescheduled exam, apparently Swartz refused to show up because it had been arranged to be held on a day that he would not have worked according to his regular schedule. He offered this excuse, but it was clear that he felt the Postal Service had received sufficient certification of his fitness in the two documents that he supplied from Dr. Jones.

The Postmaster then called Labor Relations to determine how he should proceed. He was advised not to allow Swartz to go back to work until he had another physical examination.

Although Swartz apparently reported to the platform every day, the Postmaster kept informing him he had to have another physical and Swartz kept insisting he should be restored to duty. This stand-off continued for some time during which the Postmaster made no further effort to arrange another definite date for an examination. After some period of time, Labor Relations became concerned. They arranged for Swartz to be examined by a Civil Service Commission doctor in NewLondon. That doctor, Dr. Carno, examined Swartz during the latter part of August. The results of his exam, indicating that Swartz was fit to return to duty, were relayed to the Commission about October 1, 1976. The Postmaster claimed he did not get this information until October 18, 1976, and then he put Swartz back to work immediately.

OPINION OF THE ARBITRATOR:

Under Section 8151 of the Federal Employee Compensation Act, as amended, the USPS was obligated to "immediately and unconditionally accord the employee, if the injury or disability has been overcome within one year after date of commencement of compensation... the right to resume his former or equivalent position..." From the account given in the Statement of the Case above, it is apparent that

the Postal authorities in New London did not fully meet that obligation or afford the employee the earned right, if incapable of returning, of getting his appropriate disability retirement. There was a period of time, from after he refused to go for an exam on August 6, 1976, until he was returned to work on October 19, 1976, in which the Postmaster made only one further and belated attempt to schedule him for such an exam and direct that he attend. This is the advice that the Postmaster had been given by a very prudent medical officer of the Postal Service. During the interim, Swartz was no longer receiving compensation payments, because his own doctor had certified him fit to return to work, and he did not get any pay from the Postal Service because he was not allowed to resume his employment. Obviously, the Service did not have the right to keep his status in limbo for that period of time. Labor Relations recognized this, after some time, and then arranged for a physical exam.

There is no question that the Postal Service was entitled, as Dr. Scialla indicated, to a third opinion, in the light of the conflicting medical evidence which had been presented, but the failure to vigorously pursue such a course in timely fashion must be remedied. For that reason, the Arbitrator makes the following

A W A R D

For the reasons set forth in the Opinion above, Jule Swartz must be made whole for all loss of earnings suffered in the period from August 7, 1976 until he was returned to duty on October 19, 1976.



HOWARD G. GAMSER, ARBITRATOR

Washington, DC
July 25, 1979