

REGULAR ARBITRATION PANEL

C #10678

In the Matter of Arbitration)
Between)
UNITED STATES POSTAL SERVICE)
and)
AMERICAN POSTAL WORKERS UNION,)
AFL-CIO)

OPINION AND AWARD

Nicholas H. Zumas, Arbitrator

Grievant: Lorenzo Ellerby

Case No.: N4C-1A-C 28399

Appearances:

For U.S. Postal Service: Helen Kendrick

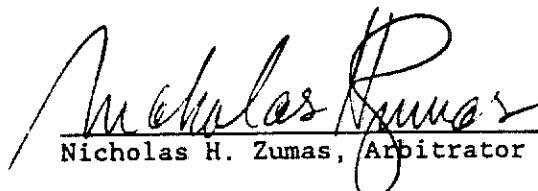
For Union: Anthony Caniano

Place of Hearing: New York, New York

Date of Hearing: April 18, 1990

Award: Grievance sustained. The Service failed to meet its burden of showing that a Fitness for Duty Examination including drug testing was required upon Grievant's return from military service. Grievant shall be entitled to pay for time lost, excluding outside earnings, from March 17 to June 21, 1986.

Date of Award: July 20, 1990


Nicholas H. Zumas, Arbitrator

STATEMENT OF THE CASE

This is an arbitration proceeding pursuant to the provisions of Article 15 of the National Agreement between United States Postal Service (hereinafter "Service") and American Postal Workers Union, AFL-CIO (hereinafter "Union"). At the hearing, exhibits were offered and made part of the record and oral argument was heard.

Grievant was not allowed to return to employment after serving in the military for approximately four months because a Fitness for Duty Examination taken upon his return revealed a positive test for marijuana. The Union, on behalf of Grievant, contends that he was unjustifiably withheld from employment because there was no showing that a Fitness for Duty Examination was required. Management took the position that when Grievant tested positive for marijuana, it had the right to keep him from returning to work until he tested negative.

The parties, having failed to resolve the matter during the various Steps of the grievance procedure, referred the dispute to this Arbitrator for resolution.

ISSUE

The question to be resolved is whether Management violated the National Agreement when it conducted a random drug test on Grievant upon his return from temporary military duty; and if so, what should the remedy be.

STATEMENT OF FACTS

At all times pertinent, Grievant was employed as an MPLSM Operator at the FDR facility in New York City. He was hired in December 1983.

On November 14, 1985, Grievant took a break from his employment and went into the military for approximately four months. Upon his return on March 16, 1986, Grievant was required to undergo a Fitness for Duty Examination, including a urinalysis. The urinalysis proved positive for marijuana. Grievant was re-tested and the second test also showed positive for marijuana metabolites. Grievant went to his own physician on May 5, 1986, and returned with a finding showing that he tested negative. Management did not accept his own physician's findings, and Grievant was retested by the Postal Medical Unit and this test proved negative. He was reinstated to employment on June 21, 1986.

FINDINGS AND CONCLUSIONS

After review of the record, it is this Arbitrator's finding that Management, contrary to Postal Regulations, failed to show that random drug testing under the circumstances was justified.

Part 322.22 of Postal Bulletin 21527 (dated 8-15-85) provides:

"Return to USPS After Military Service. Form 2485 is not required (even if there is a break in service of more than one year) unless there is evidence indicating

that the individual may be medically unable to perform the duties of the position without hazard to self or others."

There is nothing in the record and nothing was produced at the hearing, to indicate in any way that Management had any basis for requiring a Fitness for Duty examination, including random drug testing. This was in clear contravention of the above quoted regulation, which is, under Article 19, incorporated into and made part of the National Agreement. As such, the urinalysis results are void.

While the Union's Step 3 appeal requests that Grievant be paid for all time lost from May 5 to June 21, 1986 (May 5 being the date on which Grievant received a negative result from his physician), the fact is that Grievant was impermissibly prevented from working commencing March 17, 1986. He is entitled to be compensated from that date until his return to duty.