

C #09474

REGULAR ARBITRAITON PANEL

In the Matter of the Arbitration)
between) GRIEVANT: R. Corley
UNITED STATES POSTAL SERVICE) POST OFFICE: Monroe, LA
and) CASE NO. S7N-3Q-C 23061
NATIONAL ASSOCIAITON OF LETTER)
CARRIERS)

BEFORE: Robert G. Williams, Arbitrator

APPEARANCES:

For the U.S. Postal Service: C.A. Meyer

For the Union: Collier M. James

Place of Hearing: 501 Sterlington Rd.
Monroe, LA

Date of Hearing: October 25, 1989

AWARD:

The Grievance is hereby sustained in accordance with the opinion. The Grievant shall be compensated for the difference between what he was paid and what PTF Upshaw was paid while they were on light duty assignments. This Arbitrator retains jurisdiction in the event a dispute arises regarding the implementation of this award.

Date of Award: November 24, 1989

RECEIVED *Robert G. Williams*
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I. BACKGROUND

This case arose under the National Agreement effective from July 21, 1987 until November 20, 1990. The Grievant, a Regular Carrier, was eligible for light duty, but only was permitted to case his own route for approximately four (4) hours per day, while two (2) Part Time Flexible Carriers eligible for light duty worked eight (8) hour days plus overtime. The Grievant protested this action, filed his grievance on July 26, 1989 and properly processed his case to this arbitration. An arbitration hearing was held on October 25, 1989 at which time the parties stipulated undisputed facts, introduced their evidence, examined all witnesses and argued their respective positions. The issues presented at the hearing were as follows:

- (a) Is the Grievance arbitrable and, if so;
- (b) Did the Service violate the Agreement when it worked the Grievant on light duty for less than eight (8) hours in a day, while PTF carriers on light duty worked longer hours and, if so, what shall be the remedy?

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

II. FINDINGS

The material facts in this case are not disputed by the parties. The Grievant is a Regular Carrier who suffered an off the job back condition. He was examined on June 5, 1989 by his doctor. He placed him on partial disability from June 5, 1989 until July 17, 1989 with a 20 lbs. weight restriction and a 4 hours motor vehicle operating restriction. He allowed the Grievant eight (8) hours and forty (40) hours work. On June 17, 1989 the Grievant requested light duty from the Service. Employee Hollis applied for light duty on June 28, 1989 and Employee Upshaw applied on July 3, 1989. Both of these employees were Part Time Flexible Carriers. During their overlapping light duty work the three (3) employees worked the following hours:

Light Duty Work

| <u>Pay Period PP</u> | <u>Regular Grievant</u> | <u>PTF Hollis</u> | <u>PTF Upshaw</u> |
|--------------------------|-----------------------------|-----------------------|-----------------------|
| PP 14 (1) | 11.97 | 33.45 | 36.99 (2.95 OT) |
| PP 14 (2) | 16.66 | 38.74 .50 OT) | 41.82 (2.18 OT) |
| PP 15 (1) | 12.82 | 40.00 | 47.88 (7.18 OT) |

The three (3) employees essentially had the same restrictions regarding the work they should perform. PTFs Hollis and

Upshaw were permitted to work eight (8) hours. The Grievant on the other hand, only was allowed to case his own route. The two PTF Carriers, however, cased other routes the Grievant could have cased. According to the Supervisor of Delivery and Collections, he could have scheduled eight (8) hours of work for the Grievant, but it would have delayed the delivery of routes.

III. POSITION OF PARTIES.

The Union contends the Grievant should have been given the work in lieu of the two other employees. The Grievant was a Regular Carrier, while the other employees on light duty assignments were Part Time Flexible Carriers. If a guideline was needed in making these assignments, seniority should have controlled. Under Article 15.4 an arbitrator is required to follow the Agreement. Management simply permitted the Grievant to work his casing. They made no effort to identify other light duties for the Grievant to perform.

Management contends the Service is not required to provide light duty for eight (8) hours and/or forty (40) hours to light duty employees. In support of this position Management cites Arbitrator Mittenthal's Awards in Case Nos. HIC-3T-C-18210 (1984)

and HIC-4E-C-35028 (1987). Under Article 15.4 (D) these awards are precedent setting. The Union has the burden of proof that work was available for light duty assignments. The Service's first obligation is to process the mail, not provide light duty work.

IV. DISCUSSION

This case involves the interpretation and application of several separate, but interrelated articles. These provisions of the National Agreement are controlling in this case:

ARTICLE 3 MANAGEMENT RIGHTS

The Employer shall have the exclusive right...:

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;

ARTICLE 7 EMPLOYEE CLASSIFICATIONS

Section 1. Definition and Use

A. Regular Work Force

The regular work force shall be comprised of two categories of employees which are as follows:

1. Full-Time. Employees in this category...shall be assigned to regular schedules consisting of

five (5) eight (8) hour days
in a service week.

2. Part-Time. Employees in
this category...shall be
assigned to regular schedules
of less than forty (40) hours
in a service week or shall be
available to work flexible
hours....

ARTICLE 8 HOURS OF WORK

Section 1. Work Week

The work week for full-time
Regulars shall be forty (40)
hours per week, eight (8) hours
per day....shorter work weeks
will, however, exist as
needed for part-time regulars.

ARTICLE 12 PRINCIPLES OF SENIORITY etc.

Section 2. Principles of Seniority

A. Except as specifically provided
in this Article, the principles of
seniority are established in the
craft Articles of this Agreement.

ARTICLE 13 ASSIGNMENT OF ILL OR INSURED REGULAR WORKFORCE EMPLOYEES

Section 1. Introduction

A. Part-time fixed schedule employees
assigned in the craft unit shall be
considered to be in a separate category.
All provisions of this Article apply
to part-time fixed schedule employees
within their own category.

B. The U.S. Postal Service and the Unions recognizing their responsibility to aid and assist deserving full-time regular or part-time flexible employees who through illness or injury are unable to perform their regularly assigned duties, agree to the following provisions and conditions for reassignment to temporary or permanent light duty or other assignments. It will be the responsibility of each installation head to implement the provisions of this Agreement within the installation, after local negotiations.

Section 2. Employee's Request for Reassignment

A. Temporary Reassignment

Any full-time regular or part-time flexible employee recuperating from a serious illness or injury and temporarily unable to perform the assigned duties may voluntarily submit a written request to the installation head for temporary assignment to a light duty or other assignment....

B. Permanent Reassignment

Any ill or injured full-time regular or part-time flexible employee having a minimum of five years of postal service or any full-time or part-time flexible employee who sustained injury on duty, regardless of years of service, while performing the assigned duties can submit a voluntary request for permanent reassignment

to light duty or other assignment to the installation head if the employee is permanently unable to perform all or part of the assigned duties.

C. Installation heads shall show the greatest consideration for full-time regular or part-time flexible employees requiring light duty or other assignments, giving each request careful attention, and reassign such employees to the extent possible in the employee's office. When a request is refused, the installation head shall notify the concerned employee in writing, stating the reasons for the inability to reassign the employee.

Section 3. Local Implementation

Due to varied size installations and conditions within installations, the following important items having a direct bearing on these reassignment procedures (establishment of light duty assignments) should be determined by local negotiations.

A. Through local negotiations, each office will establish the assignments that are to be considered light duty within each craft represented in the office. These negotiations should explore ways and means to make adjustments in normal assignments, to convert them to light duty assignments without seriously affecting the production of the assignment.

B. Light duty assignments may be established from part-time hours, to consist of 8 hours or less in a service day and 40 hours or less in a service week. The establishment of such assignment does not guarantee any hours to a part-time flexible employee.

C. Number of Light Duty Assignments.

The number of assignments within each craft that may be reserved for temporary or permanent light duty assignments, consistent with good business practices, shall be determined by past experience as to the number or reassessments that can be expected during each year, and the method used in reserving these assignments to insure that no assigned full-time regular employee will be adversely affected, will be defined through local negotiations. The light duty employee's tour hours, work location and basic work week shall be those of the light duty assignment and the needs of the service, whether or not the same as for the employee's previous duty assignment.

Section 4. General Policy Procedures

[This Section sets out general policy considerations A through L as guides in implementing this Article]

ARTICLE 19 HANDBOOKS AND MANUALS

[This Article incorporates by reference ELM provisions]

ELM Chapter 546 - Reemployment of
Employees Injured on Duty

.141 Current Employees. When an employee has partially overcome a compensable disability, the USPS must make every effort toward assigning the employee to limited duty consistent with the employees medically defined work limitation....

ARTICLE 30 LOCAL IMPLEMENTATION

15. The number of light duty assignments within each craft or occupational group to be reserved for temporary or permanent light duty assignment.

16. The method to be used in reserving light duty assignments so that no regularly assigned member of the regular work force will be adversely affected.

17. The identification of assignments that are to be considered light duty within each craft represented in the office.

ARTICLE 41 LETTER CARRIER CRAFT

Section 2. Seniority

A. Coverage

1. This seniority section applies to all regular work force Letter Carrier Craft employees when a guide is necessary for filling assignments and for other purposes and will be used to the maximum extent possible.

(EMPHASIS ADDED)

These provisions are controling in this case.

Given the number of arbitration cases cited and their interpretation of Article 13, these provisions may be controlling, but confusing to apply. The cases are presented as factual disputes over whether or not light duty work was available and/or whether Management made the effort to find light duty work. The evidence presented is all after the fact. It ignores what Management actually knew at the time the manning schedule was prepared. These cases simply become after the fact arguments with the Union contending you should have done more and Management responding we showed the "greatest consideration." The quibbling continues in case after case. Yet, the parties adopted considerable language in Article 13 to establish a system for making these decisions. Six (6) pages of the Agreement are devoted to this subject.

Arbitrators are bound to enforce the intentions of the parties. The best evidence of their intentions is the Agreement itself. Through their Agreement the parties expect to regulate their collective bargaining relationship. They have established a decision making system. As such, the Agreement must be interpreted and applied in its entirety. To the extent possible, interpretations of words, phrases,

sentences, paragraphs, provisions, sections and articles must be consistent with the purpose and function of the entire Agreement. Otherwise, fragmented intentions and disjointed interpretations wrongfully depict parties as inept. Negotiators express their intentions to their respective constituencies only to find later interpretations inconsistent with these expressed intentions. Article 13 is not an island unto itself. It must be read and applied as part of the entire Agreement.

In the absence of language to the contrary, Management has the right and obligation to: (1) Plan the system for collecting, sorting and distributing the mails; (2) Determine the facilities, equipment and layout necessary to process the mail; (3) Establish the organizational structure and schedule for processing mail and; (4) Determine the number and type of job assignments that must be filled to man the organization. These types of management functions and responsibilities clearly are contemplated by the parties under Article 3, Management Rights.

When Management begins to formulate job assignments, however, the collective bargaining agreement is triggered. Article 7 specifies that the work force is comprised of full-time employees "assigned to...schedules consisting of five (5)

eight (8) hour days...." and "part-time employees assigned to...less than forty (40) hours." Article 8 specifies work weeks of forty (40) hours and eight (8) hours per day. The term "assignment" is a magic word under the Agreement. It refers to an employee's job, the duties performed and the time they are performed. When Management designs its organization, it must describe jobs or assignments that are scheduled for these hours if it is a regular assignment. Otherwise, it may be less than forty (40) hours or eight (8) per day and be a PTF assignment. This assignment concept is used throughout the Agreement for such functions as posting, bidding, overtime, promotion, reduction in force and seniority.

The assignment concept of duties and hours must be understood to interpret and apply Article 13. It uses the terms "assignment", "reassignment" and "assigned" throughout. In Section 1 (A) part-time employees are to be considered in a separate category under Article 13. Section 1 (B) places the burden of reassignments for employees not able to perform their regular assignments on the parties. Then it states in clear language:

....It will be the responsibility
of each installation head to implement

the provisions of this Agreement
within the installation, after
local negotiations.

This language requires local negotiations before Article 13 can be implemented. This raises the issue of what is required in local negotiations and what is required under Article 13. Section 3, Local Implementation, instructs local parties. It expressly provides for the establishment of light duty assignments by local negotiations due to the variety of local installations. Section 3 (A) requires each office to establish the assignments that are to be considered light duty. Section 3(B) authorizes the consolidation of part-time hours into light duty assignments of 8 hours or less in a service. It further provides that such assignments do not guarantee hours for part-time flexible employees. Section 3(C) then requires local parties to establish a number of light duty assignments:

The number of assignments within each craft that may be reserved for temporary or permanent light duty assignments, consistent with good business practices, shall be determined by past experience as to the number of reassessments that can be expected during each year...will be defined through local negotiations....

Clearly, local parties are required to examine the frequency

of light duty requests in the past to establish an adequate number of light duty assignments in the future. In other words, light duty assignments must be included in local management's manpower planning and staffing process. Section 4 then sets out the policies to be followed during this manning and negotiation process.

Article 30 clearly adopts and reinforces this concept in items 15, 16, and 17. Item 15 requires local parties to agree upon the number of assignments reserved for light duty. Item 16 requires local parties to decide upon a method for protecting regular employees from being adversely affected. Item 17 then requires the identification of assignments that are to be considered light duty. The parties clearly intended for light duty assignments to be available in the event they were needed. At no point did the parties say that Regular Carriers had to give up their hours of work rights. The parties did say that less than eight (8) hour assignments could be made for Part-time Flexible carriers. In addition these assignments would include a description of the light duty work to be performed, just like any other assignment.

Once local parties have determined the number of assignments available for light duty, Article 13 describes the procedures to apply for these available assignments. Article 13

Section 2 (A & B) set out the procedures for applying for temporary or permanent reassessments as the result of illness or injury limitations. Section 2(C) then requires installation heads to give each request careful attention. If a request is denied, Management must state the reasons for not reassigning an employee. It may be that the applicant has limitations that would be exceeded in an available assignment or an assignment may not be available.

In the event more requests for reassignment are made than assignments are available, a method for allocating these assignments must be followed. Article 41.2.A.1 provides the accepted method. Seniority applies when a guide is necessary for filling assignments. The applicants with the greatest seniority are entitled to the available light duty assignments under Article 41. Now, Management may reject a request for an available assignment not only because that assignment exceeds an applicant's limitations, but also on grounds of seniority.

Now, what happens when the available assignments negotiated by the local parties are exhausted or the local parties failed to negotiate any light duty assignments. In other words, no standing light duty assignments are available.

Again, we must return to Article 3, Management's Rights. Under this Article, as in most management rights provisions, Management is not required to provide job assignments designed for persons with physical restrictions. Management is responsible for designing job assignments that efficiently process the mail. In the absence of locally negotiated light duty assignments, Management is not obligated to find or fashion a light duty assignment. Reported cases have relied on Article 13, Section 2(C) as the basis for a contrary position. This interpretation takes paragraph (C) out of context. Section 1 requires local negotiations. Section 3 sets out the requirements for local negotiations. These local negotiations must occur first to create available light duty assignments. Then Section 2 dealing with the processing of requests can be followed. Paragraph C of Section 2 simply requires Management to carefully consider requests for assignments available as the result of local negotiations. It does not require Management to create new light duty assignments, not created by local negotiations. Of course, if Management voluntarily creates such assignments, they must be filled in accordance with seniority. A Grievant, however, can not require Management to create a light duty assignment, not created by local negotiations under Articles 13 and 30 in

a Local Memorandum of Understanding.

In this case the parties negotiated Article 30, Items 15, 16 and 17:

ITEM 15

One permanent light duty assignment, LD-01 will be provided for all crafts....

ITEM 16

Temporary light duty assignments will be provided to any employee, commensurate with documented medical limitations and abilities from available light duty work.

ITEM 17

(Simply lists duties that could be included in a light duty assignment)

Item 16 is controlling in this case. It clearly provides that temporary light duty assignments will be provided from available light duty work. Local parties did not establish a definite number of temporary light duty assignments as required by Article 13, Section 3(C). Instead, they relied on Management's discretion to fashion temporary light duty assignments from available light duty work. In other words, the local parties simply restored Management's rights under Article 3. A Grievant contesting Management's exercise of discretion had the burden of proving Management acted in bad faith on what Management knew at the time the decision was made, not

after the fact. If the evidence is ambiguous, capable of a favorable or unfavorable interpretation, a Grievant has failed to meet his burden.

In this case local Management essentially fashioned 2½ light duty assignments. The Grievant, a Full Time Regular, only was allowed to case his mail for less than $\frac{1}{2}$ day, while two PTF employees were allowed to work full day assignments. In other words, Management fashioned 2½ job assignments of light duty work. The Grievant was the senior employee. He should have been able to exercise his seniority and claim one of the eight (8) hour assignments or the four (4) hour assignment. He was denied this opportunity and must be compensated under the Agreement.

Management also contended the Grievance was not arbitrable because the Grievant did not attend the Step 1 meeting. Instead, his Union Representative attended the meeting on behalf of the Grievant. Under Article 15, Section 2, Step 1, an employee or the Union or both can initiate a grievance. The Step 1 language expressly provides that an individual Grievant does not have to participate in a Union grievance. Certainly, the same principle would apply to a jointly processed grievance. This case, therefore, was declared arbitrable at the hearing.

Arbitrator Mittenthal in Case No. H1C-4E-C-35028 (1987) essentially held that Management had the discretion to schedule light duty assignments of less than forty (40) and less than (8) hours in a service week. Such a schedule always has been permissible for Part time Flexible employees. They are the employees who normally fill such assignments. If these short hour assignments are the only light duty assignments available, a Regular Carrier seeking light duty work must claim one of these assignments with his seniority if he expects to work. He can not require Management to combine such assignments. Just because Management schedules an eight (8) hour day does not mean an employee is guaranteed eight (8) hours. As Arbitrator Mittenthal pointed out, Article 8 only guarantees the hours described in Section 8, Guarantees. Any employee may be sent home before his eight (8) hours when no work is available. Management only is required to pay the Section 8, Guarantees. The Award in this case is consistent with Arbitrator Mittenthal's holding in Case No. H1C-4E-C-35028 (1987).

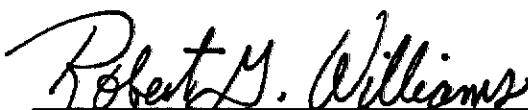
This Award also is consistent with Arbitrator Mittenthal's award in Case No. H1C-3T-C-18210 (1984). In that case he held Management could change light duty assignments from one tour to another. The same principle applies to all assignments. As long as the assignments are changed in accordance with the

Agreement's procedures and an employee's seniority is respected, no violation occurs. The Award in the present case is consistent with Arbitrator Mittenthal's award.

V. AWARD

The Grievance is hereby sustained in accordance with the opinion. The Grievant shall be compensated for the difference between what he was paid and what PTF Upshaw was paid while they were on light duty assignments. This Arbitrator retains jurisdiction in the event a dispute arises regarding the implementation of this award.

This the 24th day of November, 1989



Robert G. Williams