

O#04936

In the Matter of Arbitration Between :
UNITED STATES POSTAL SERVICE :
 "Service" : S1N-3W-C 19996
and :
 Jeff Heller
NATIONAL ASSOCIATION OF LETTER CARRIERS:
 "Union" : Ft. Lauderdale, Florida
Before: James F. Scearce, Arbitrator :

This case involves a dispute over the Service's refusal to grant Continuation of Pay to the grievant and reinstate annual leave he used during a period of absence. The Service raised a procedural issue which is to be addressed and disposed of prior to, and possibly to the exclusion of, consideration of the merits issue in this case. The hearing was held on December 11, 1984 at Ft. Lauderdale, Florida. Both parties were afforded a full opportunity to present, examine and cross-examine witnesses and to submit exhibits. The proceedings were recorded by notes of the arbitrator. Both parties closed argument at the hearing.

APPEARANCES

For the Union -

Don McMahon

President, Branch 2550
NALC (Presenting)

Jeff Heller

Grievant (Rebuttal Witness)

For the Service -

Holloway Adair

Labor Relations Specialist
Southern Region (Presenting)

J. E. Foster

Superintendent Delivery and
Collections-Oakland Park
Branch (Witness)

BACKGROUND

The grievant was a regular city letter carrier assigned to the Oakland Park Branch -- part of the Ft. Lauderdale postal system -- when on January 24, 1983 he advised management that he had sustained an on-the-job injury to his ankle on January 22 while delivering his route. A "Notice of Traumatic Injury and Claim for Continuation of Pay/Compensations" (U.S. Department of Labor Form CA-1) was issued to the grievant and he was sent for a medical examination. The result (apparently set out on a Form CA-17 and not disputed, but not placed in evidence) was a finding by the attending physician that the grievant could work but should be on his feet as little as possible. The grievant did not work that day (January 24, 1983) and the next day was one of his

regular off-days. He was advised to report to the main post office on his next regular work day (January 26, 1983) to begin a light duty assignment; the hours of such work were to be 5:00 p.m.-1:30 a.m. On January 26, 1983 the grievant apparently went back to the doctor and, at about 11:00 a.m. that morning, he presented to his supervisor a medical statement clearing him to return to his regular duties (his tour began at 6:00 a.m.). According to the grievant, he offered to work the remainder of his tour but was declined. According to the supervisor (Foster) he told the grievant to report to the light duty assignment as scheduled and then to return to his regular route the following morning. The grievant apparently demurred, pointing out that only five or so hours would transpire between the end of the light duty assignment and commencement of his regular tour. (Foster also purports to have offered to retain the grievant on the light assignment until his next regularly scheduled off-day -- an offer which was refused.) The grievant was also offered the option of taking annual leave in lieu of working the January 26 light duty assignment, which he accepted.

A grievance was filed to recover the annual leave used and to substitute Continuation of Pay (COP); refusal by the Service to entertain such demand results in this proceeding.

POSITION OF THE UNION

The grievant was injured on duty and was entitled to be off work under pay as a result. The Service was unreasonable in requiring the grievant to report for light duty and then be on his regular job 4 1/2 hours later. He was entitled to be under COP for January 26, 1983; as a consequence, the Service should be instructed to reinstate the annual leave and pay the grievant the time he should have been under COP.

POSITION OF THE SERVICE

The remedy being sought by the Union is outside the scope of the Service's jurisdiction and beyond the arbitrator's authority to grant. The Federal Employees' Compensation Act (5 USC Chapter 81) specifically reserves authority to the U.S. Department of Labor to determine and distribute COP benefits. The grievant was not considered to be disabled for duty; he was merely restricted. The Service was able to establish a light duty assignment in compliance with the restrictions set by the examining physician and, hence, met its obligations. The claim is not properly before the arbitrator and without merit.

CITED/RELEVANT PROVISIONS OF THE
AGREEMENT AND RELATED DOCUMENTS

AGREEMENT

ARTICLE 13 - Assignment of Ill or Injured Regular
Work Force Employees

(Not reproduced here for sake of brevity)
(Jt Ex 1)

EMPLOYEE AND LABOR RELATIONS MANUAL

540 Injury Compensation Program

541.1 Background

.11 Law. Under the provisions of the Postal Reorganization Act, 39 USC 1005(c), all employees of the United States Postal Service (USPS) are covered by the Federal Employees' Compensation Act (FECA), 5 USC Chapter 81.

.12 Administration. FECA is administered by the Office of Workers' Compensation Programs (OWCP), United States Department of Labor. OWCP decides whether the employee, or a claimant acting on behalf of the employee, is entitled to benefits under FECA.

(Ser Ex 1)

THE ISSUE

1. Is the remedy being sought by the Union properly within the arbitrator's authority?
2. If the answer to Issue 1 is in the affirmative, did the Service violate the Agreement or related regulations by its actions in this case; if so, what is the appropriate remedy?

DISCUSSION AND FINDINGS

It is statutorily prohibited for the Service to grant Continuation of Pay. It simply falls outside its ken of authority. It follows, then, that an arbitrator cannot direct relief that is beyond the scope of his/her authority -- which is defined by the terms of the Agreement. The grievant may feel that his attempts to return to duty were not met by a sufficiently favorable response by the Service. In point of fact, however, his presentation of a clean bill of health at midday on January 26, 1983 was obviously too late to serve a useful purpose on that date: obviously, his route had been assigned elsewhere and, in fact, it would not have been reasonable to assume that plans could have already been in place for one or more additional days. It might have been understandable if the grievant was not enthused with the light duty assignment hours or location, but there is no reason to believe it was made other than objectively. I find nothing to persuade me that I am authorized to direct the relief sought in this case.

One final point needs to be addressed. The Union complains that the Service did not raise the procedural objection during the handling of the grievance. While such a complaint is sometimes meritorious, it is not where, as here, the contractual authority of the arbitrator is involved -- in other words,

the authority to direct an action by the Service which is prohibited by law. The Service or Union may properly raise such question at any point in the dispute resolution process, including arbitration.

AWARD

Grievance is moot insofar as relief is concerned.



James F. Scearce
Arbitrator

Atlanta, Georgia

May 28, 1985