

C# 6365

ARBITRATION AWARD

August 6, 1986

UNITED STATES POSTAL SERVICE

-and-

Case No. H1N-5F-C-30285

NATIONAL ASSOCIATION OF LETTER  
CARRIERS

Subject: Administrative Leave - Eligibility - Limitations

Statement of the Issues: Whether full-time regular employees asked to report on a non-scheduled day but prevented from reporting by an "Act of God" are entitled to administrative leave for that day under Section 519.215a of the Employee & Labor Relations Manual (ELM)? If so, are there other provisions of the ELM or handbooks which place limitations on this administrative leave obligation? If so, what are those limits?

Contract Provisions Involved: Articles 7, 8, 19, 37 and 41 of the July 21, 1981 National Agreement and various ELM and handbook provisions.

Appearances: For the Postal Service, Stephen W. Furgeson, Labor Relations Executive, Washington; for NALC, Shailah T. Stewart, Attorney (Cohen Weiss & Simon), and Devon Lee Miller, NALC Staff Attorney.

Statement of the Award: The grievance is resolved in accordance with the foregoing opinion.

## BACKGROUND

This case involves a dispute over the administrative leave provisions in Section 519.215 of the Employee & Labor Relations Manual (ELM). NALC urges that full-time regulars asked to work on a non-scheduled day but prevented from reporting by an "Act of God" are entitled to administrative leave. The Postal Service disagrees.

On Tuesday, October 16, 1984, a severe snowstorm struck the Colorado Springs, Colorado area. The roads were closed and postal operations were shut down. This was, in the Postal Service's view, a "community disaster" or "Act of God" which triggered the administrative leave provisions of the ELM. The relevant provisions read as follows:

"519.1 Definition. Administrative leave is absence from duty authorized by appropriate postal officials, without charge to annual or sick leave and without loss of pay.

### "519.2 Events and Procedures for Granting Administrative Leave

#### .21 Acts of God

.211 General. Acts of God involve community disasters such as fire, flood, or storms. The disaster situation must be general rather than personal in scope and impact. It must prevent groups of employees from working or reporting to work.

.215 Employees Prevented from Reporting. Employees scheduled to report who are prevented from reporting or who after reporting are prevented from working by an Act of God may be excused as follows:

a. Full-time and part-time regular employees receive administrative leave to cover their scheduled tour of duty not to exceed 8 hours.

b. Part-time flexible employees receive administrative leave for 2 or 4 hours, as provided in 519.214c." (Emphasis added)

The work force on Tuesday, October 16 consisted largely of full-time employees for whom this was a regularly scheduled day. Most of them were unable to report on Tuesday because of the snowstorm. They received administrative leave, eight hours' pay for the day.

Management had earlier anticipated that extra help, beyond the regularly scheduled force, would be needed this Tuesday. It asked seven full-time employees to work on what was for them a non-scheduled day. They agreed to work. However, they too were unable to report because of the snowstorm. They were denied administrative leave. That denial prompted the instant grievance. NALC contends that these seven employees' rights under Section 519.215a have been violated. It believes they should be treated the same as the full-time employees for whom Tuesday had been a regularly scheduled day. It requests that they be given administrative leave, that is, eight hours' pay, for the day's work they lost due to this "Act of God."

#### DISCUSSION AND FINDINGS

The critical ELM language, Section 519.215a, speaks of "full-time...regular employees" who are "scheduled to report" but are "prevented from reporting...by an 'Act of God'" and who are accordingly entitled to "administrative leave to cover their scheduled tour of duty not to exceed 8 hours." Administrative leave authorizes pay for the employee's absence, for the lost work opportunity.

NALC claims the language of 519.215a expressly applies to the grievants' situation on Tuesday, October 16. It asserts that they were "full-time...regular[s]", that they were "scheduled" on the Tuesday in question even though this was ordinarily one of their non-scheduled days, that they were unable to report on account of an "Act of God", and that they hence satisfied the requirements of 519.215a and had a right to administrative leave. It believes its interpretation of this administrative leave language is supported by other ELM and handbook provisions and by equitable considerations as well. It adds that even if the arbitrator views this language as ambiguous, the ambiguity should be resolved against the Postal Service inasmuch as Management alone drafted 519.215a.

The Postal Service, on the other hand, insists that full-time regulars are eligible for administrative leave only for

absence due to an "Act of God" on a regularly scheduled day. It emphasizes that 519.215a covers a "scheduled tour of duty" and it construes those words to mean a "regularly scheduled tour..." It says this interpretation is supported by other terms of the National Agreement and various handbooks. It maintains the grievants had no rights under 519.215a because their absence was on a non-scheduled day, i.e., something other than a regularly scheduled day. It notes that if the administrative leave language is deemed ambiguous, the ambiguity should be resolved in Management's favor because of past practice. It relies also on its "pay policies" and "payroll procedures", all of which call for denial of administrative leave to full-time regulars on a non-scheduled day.

Any analysis of this dispute must begin with the proposition that the ELM, including Section 519.215a, is incorporated in the National Agreement through Article 19.. Hence, the Postal Service appears to be obliged to grant administrative leave under the circumstances set forth in 519.215a. The parties read this provision differently. NALC's reading is that full-time regulars are potentially eligible for administrative leave on any day they are scheduled, whether part of their regularly scheduled week or not. The Postal Service's reading is that full-time regulars are not eligible on a non-scheduled day, on any day outside their regularly scheduled week.

NALC's interpretation is consistent with the plain language of Section 519.215a, "...administrative leave to cover their scheduled tour of duty..." There is no indication that the word "scheduled" was used here as a term of art. Hence, it should be given its customary workplace meaning. Someone is "scheduled" on a certain day if he has earlier been directed to report that day. This is true regardless of whether or not that day is part of his regular work week. Article 8, Section 5 (National Agreement) recognizes that "when needed, overtime work for regular full-time employees shall be scheduled..." Overtime results from work on a non-scheduled day. It follows that an employee can be "scheduled" on what would otherwise have been a non-scheduled day. And once "scheduled" in this manner, he is obligated to work.\*

\* I assume of course that this request to work was consistent with the overtime distribution rules and the overtime desired lists.

For the non-scheduled day thus becomes part of his "assigned schedule" and it is then his responsibility, according to Section 511.43 (ELM), "to maintain...[his] assigned schedule and...make every effort to avoid unscheduled absences." Should he fail to report on such a day without justification, he might well be disciplined. The existence of this obligation to work in these circumstances necessarily assumes that he has been "scheduled." As for the phrase "tour of duty", it refers to his hours of work on a "scheduled" day.

This view is supported by the final words in Section 519.215a, "...their scheduled tour of duty not to exceed 8 hours" (Emphasis added). A regularly scheduled tour involves eight hours' work, no more. The underscored words suggest that the Postal Service also had in mind tours of more than eight hours, that is, something other than a regularly scheduled tour. Otherwise there would have been no need for this eight-hour limitation. That being so, administrative leave in 519.215a cannot be read as if it applied only to a "...regularly scheduled tour of duty..."

The Postal Service and NALC were well aware of the difference between regularly scheduled days and non-scheduled days. They provided in Article 8, Section 4C (National Agreement) for the payment of overtime for "time worked outside ...[one's] regularly scheduled work week..." They provided in Article 41, Section 1A (National Agreement) for continuation of "existing local procedures for scheduling fixed or rotating non-work days..." (paragraph 3) and for waiver of the posting requirement where a given "assignment" has undergone a "change in starting time or in non-scheduled days..." (paragraph 4). Moreover, Section 513.411b (ELM) states that "sick leave may be charged on any scheduled work day of an employee's basic work week..." And Section 519.253b (ELM) states that "administrative leave for blood donation may be granted during a regular tour of the employee's basic work week..." In the instant case, however, the disputed language simply refers to the employee's "scheduled tour of duty ..." Had the Postal Service intended these words to limit coverage to regularly scheduled days, or had it intended these words to exclude non-scheduled days, it surely would have said so. A comparison of Section 519.215a with these other provisions strongly suggests that no such limitation or exclusion was contemplated.

Notwithstanding these realities, the Postal Service believes the language of Section 519.215a favors its position.

It stresses two words in the key sentence, "Full-time and part-time regular employees receive administrative leave to cover their scheduled tour of duty..." It urges accordingly that the coverage is only for regularly scheduled days. This argument recasts the sentence in a strained and artificial manner. The word "regular" is descriptive only of the class of employees covered by 519.215a. It is not descriptive of the kind of "scheduled tour..." covered by 519.215a. The Postal Service's attempt to wed "regular" to "scheduled" is not convincing, either as a matter of syntax or from the standpoint of other provisions of the National Agreement.\*

For these reasons, my conclusion is that Section 519.215a is applicable to a "scheduled tour..." on any day, including a day outside an employee's regular schedule. The fact that an employee's absence due to an "Act of God" occurs on what would normally have been a non-scheduled day does not make him ineligible for administrative leave. I accept NALC's interpretation of 519.215a.

This finding, however, does not necessarily resolve the grievance. For there are other ELM (and handbook) provisions which establish general principles with respect to the application of any paid leave and thus override the eligibility conditions for administrative leave.

The critical ELM provision is Section 433.1 concerning "straight time pay":

"Definition. Straight time pay is the total earnings of an employee for hours of work or authorized paid leave not in excess of 8 hours in a service day or 40 hours in a service week."  
(Emphasis added)

The significance of these words is clear. Keeping in mind that "paid leave" is compensated at straight time\*\*, an employee's "total" straight time pay in a service week may "not"

\* The Postal Service's evidence on the practice with respect to 519.215a was not persuasive. It may be that whatever practice the Postal Service sought to demonstrate was a reflection of its interpretation of the F-21 manual (Section 323.4) rather than 519.215a of the ELM.

\*\* Because "paid leave" is not work, it cannot be compensated at overtime rates.

be "in excess of 40 hours...", whether that pay is derived from "hours of work" or "paid leave." Suppose, for instance, an employee worked his regularly scheduled week and thus accumulated 40 hours of straight time pay. Suppose he was also scheduled on a non-scheduled day but was unable to report due to an "Act of God." He cannot receive administrative leave for the latter day because such "paid leave" would generate an extra eight hours at straight time, i.e., a total of 48 hours of straight time for the week, something plainly forbidden by 433.1.

All of this suggests the purpose of "paid leave." It is to provide the employee, in appropriate circumstances, with pay for time not worked so that he will receive no less than 40 hours of straight time in a given week. It is a means of guaranteeing an employee, when eligible, his anticipated 40 hours of straight time pay. To allow an employee to receive administrative leave in a week in which he realizes 40 hours of straight time for "hours of work" would be a contradiction of the principle stated in 433.1.

The same principle can be found in Postal Service handbooks. Consider F-21, Timekeepers' Instructions, Section 323.4:

"Granting Leave. Eligible employees may be granted up to 8 hours annual leave during their scheduled days or days normally worked... In no case may the total of straight time hours and all paid leave hours exceed 8 hours per service day or 40 hours per service week..." (Emphasis added)

Here too the principle is that an employee cannot be given a "total" of more than "40 hours" of straight time in a week, whether that pay is derived from hours of work or "paid leave." This plainly suggests that "paid leave" serves to provide an employee, in appropriate circumstances, with pay for time not worked so that he will receive no less than the 40 hours of straight time he was scheduled (or would have been scheduled apart from the leave). The F-21 handbook thus reinforces

the observations previously made about Section 433.1 (ELM).\*

Regional Arbitrator Zack had occasion to construe the F-21, Section 323.4, in Case No. H1C-1J-C-17664, decided November 28, 1984. There, the grievants were scheduled on what was for them a non-scheduled day, Saturday, February 12, but were unable to report because of a snowstorm. They sought administrative leave in addition to the 40 hours of straight time they received for their regularly scheduled week. Zack, in denying the grievance, explained:

"...Even though February 12th was a 'scheduled day', it is excluded from payment of Administrative Leave by the sentence of the section [323.4] that reads: 'In no case may the total of straight time hours and all paid leave hours exceed...40 [hours] per service week.' Since the grievants did work and get paid for their 40 hours that week, and since the Administrative Leave they seek to be paid for would lead to exceeding 40 service hours per week, their grievance must be denied."

Zack held, without so stating, that the words "all paid leave" in Section 323.4 apply to administrative leave. Regional Arbitrator Dennis in a later award, Case Nos. N1C-1J-C-15625 and -15444, agreed with Zack's ruling and went a step further in specifically stating that the words "all paid leave" include administrative leave. However, it should be emphasized that 323.4 is part of an "annual leave" provision. Indeed, the very first sentence of 323.4 speaks of employees being "granted up to 8 hours annual leave..." But even assuming that 323.4 pertains only to annual leave, it nevertheless illustrates that the underlying principle found in Section 433.1 (ELM) has been echoed elsewhere in Postal Service handbooks. The principle,

\* The Postal Service also stressed the terms of F-22, the PSDS Time and Attendance handbook, Section 312.7. But the provision it cited in its post-hearing brief was not effective until December 1985, more than one year after the October 1984 incident in Colorado Springs which led to this dispute. The comparable provision of F-22 in effect in October 1984, namely, Section 312.6, says nothing which is useful to the resolution of this grievance.

to repeat, is that employees can receive no more than 40 hours of straight time pay in a week, whether derived from hours of work or paid leave. This covers any kind of paid leave, including administrative leave.

My conclusion is that although the grievants in the present case met the eligibility conditions of Sections 519.215a (ELM), they cannot receive administrative leave for the day in question if they ran afoul of Section 433.1 (ELM). For the latter provision is an overriding limitation on the scope of administrative leave payments. It follows that if the grievants received 40 hours of straight time for hours worked in the week in question\*, they are not entitled to administrative leave. If, on the other hand, they received less than 40 hours of straight time for hours worked\*, they are entitled to such administrative leave as would raise their compensation for the week to 40 hours of straight time.

#### AWARD

The grievance is resolved in accordance with the foregoing opinion.



Richard Mittenthal, Arbitrator

\* This 40-hour formulation actually refers to the combination of hours worked and paid leave other than administrative leave.