C#09401

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	
between	Grievant: James J. Odom
UNITED STATES POSTAL SERVICE	Post Office: Decatur, GA
and	Case No: S7N-3E-C 1858 S7N-3E-C 1860
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	

BEFORE: James F. Scearce, Arbitrator

APPEARANCES:

For the U.S. Postal Service: Jimmy Fleming, Labor Relations Rep. (Presenting)

V. Robinson, C. Lovett (Witnesses)

For the Union: Bill Buchanan, Local Business Agent (Presenting)

James J. Odom, J. Carter (Witnesses)

PLACE OF HEARING: MPO, Decatur, GA

DATE OF HEARING: August 9, 1989

AWARD:

The Service violated applicable regulations when it failed to timely issue applicable forms to the grievant and to timely assist in their completions; however, such violation was technical in nature and the remedy sought is inappropriate. Otherwise, the Union has failed to demonstrate that the Service violated the Agreement or applicable regulations.

JAMES F. SCEARCE

DATE OF AWARD: September 30, 1989

BACKGROUND

The grievant began his postal career in 1965. In 1976 he sustained an on-the-job injury to his back and apparently experienced recurring problems with his back. On September 16, 1987 he was working in a light* (instead of limited) duty status. According to the grievant, he was directed by the Carrier foreman (Thompson) to perform work (casing mail) not within his medical restrictions. In the process, he had to pick up a tray of mail and experienced a sharp pain in his back. He purportedly asked for a Form CA-1- Federal Employee's Notice of Traumatic Injury and Claim for Continuation of Pay (Compensation) so that he might claim an on-the-job injury. Per the grievant, he was provided no such document. He alleges he also sought a Form CA-16 (Request for Examination and/or Treatment) at that time, which also allegedly was not provided. The grievant asserts that he received the CA-1 on September 24, 1987. By means of a note dated October 1, 1987 the grievant informed the postmaster of his situation and sought his assistance in getting the CA-1 completed:**

> "I was hurt on the job on Sep. 16, 1987 since then I have been trying to get one of your busy Supervisors to fill the Form out.
>
> "Something is wrong that every time I ask they never seem to have time to meet with me to fill out the Forms."
>
> (Un Ex 2)

Per the grievant, he finally received a completed form on October 8, 1987. A grievance (S7N-3E-C 1858, dated October 21, 1987) was filed protesting the grievant being required to perform duties

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*Whatever the nature of physical impairment that caused him not to be holding a regular bid assignment at that time, it apparently was not deemed job-related; otherwise, he would have been in limited duty status.

**Certain portions had to be filled out by a supervisor or Compensation Specialist.

outside his light duty assignment limitations, the delay in providing the CA-1 and lack of cooperation in getting it completed and the delay in receipt of approval of "Continuation of Pay" (COP). It demanded that the grievant be placed on COP effective September 16, 1987. The record shows that the grievant was on annual leave on September 17 (the day after the reported injury; worked eight hours each on September 18 and 19; was non-scheduled September 20 and 21; and worked eight hours on September 22 -- all in light duty status and on assignments designated for that purpose but primarily those related to markup and return of mail matter.

According to the Service, at some point in time during or before the aforecited events the Atlanta Division office consolidated functions involving markup of missent or mislabled mail being performed by associate offices such as Decatur. As a consequence, per the Service, the grievant was offered and declined* the opportunity to take an eight-hour light duty assignment there; three other Decatur employees in light duty status had agreed to such change. The grievant apparently was in a non-duty status as of October 1, 1987 (and until January 2, 1988 when he was ordered to return to duty). A grievance (S7N-3E-C 1860) was initiated in this matter. Coincidental to these events, a letter was provided to the Service by the grievant from his attending physician, dated September 30, 1987 which stated.

> "This letter is to verify that Mr. Jimmy Odom has been under my care for the past five months for an acute low back probelm. His diagnosis involves nerve root encroachment of the lumbar spine, extension sciatic neuralgia and bulging of the spinal disc itself. As such, Mr. Odom has been placed on light

*The Union asserts that the offer was actually made to the shop steward (J. Carter) at the Step 2 hearing of this grievance and was declined by him on behalf of the grievant.

duty with no lifting advised for several months. As you may know, if a patient actually suffers a rupture of the disc, he is a candidate for back surgery. On September 16, Mr. Odom reported to my office with his condition much exacerbated following work which he stated involved lifting various amounts of weight. Since that time his progress has regressed and his pain has been constant.

Often when a patient suffers a debilitating injury, his recovery is not 100%. Sometimes a change in occupation is necessary. I do not know at this point if Mr. Odom will return to his previous state of health but I do know that he needs at least 3 to 4 months of light work. This should not involve continuous lifting, using his arms overhead, or any repeated bending or twisting.

If I can be of further assistance, please feel free to contact this office.

(Un Ex 3)

These grievances remain unresolved after being reviewed and discussed at all levels of the grievance-handling procedure and are now at arbitration for final argument and disposition.

POSITION OF THE UNION

The Service was in violation of the Agreement and applicable rules and regulations by requiring the grievant to perform duties outside his medical limitation which resulted in his sustaining an on-the-job injury. It compounded its violation by not providing the necessary forms for him to report such incident and seek medical attention. The Service should have placed the grievant on continuation-of-pay (COP) effective the date of the injury and should now make him whole for the time he was unable to work. The Service violated Article 13 of the Agreement and the Local Memorandum of Understanding when it failed to provide the grievant eight hours of work at the facility within his medical limitations. Instead, it used employees on overtime to perform duties which could have been assigned to the grievant. The grievant had

sufficient and sound reason for not taking the light duty assignment at the Atlanta facility. The Service should be directed to compensate the grievant for hours of light duty work denied him since October 1, 1987.

POSITION OF THE SERVICE

The grievant's complaints and claims are without merit. Case S7N-3E-C 1858 is a claim for compensation of an alleged on-the-job injury on September 16, 1987 which is beyond the scope of the Agreement and hence not proper for consideration at arbitration. Furthermore, his request for COP was denied by the Office of Workers Compensation, U. S. Department of Labor. The Union is incorrect in its assertion in Case S7N-3E-C 1860 that the Service is obliged under Article 13 of the Agreement and applicable regualtions to furnish the grievant eight hours of light duty work at the Decatur facility. The grievant's status was not deemed to have been the result of an on-the-job injury -- for which the Service would be obligated to make every effort to assign him to available work within his limitation in his craft or in some other craft, if such work is not available. No such obligation exists where an employee is partially incapacitated for reasons other than on-the-job. The Service offered the grievant an opportunity for a full eight-hour tour of light duty work in Atlanta, which was refused. The move of the markup duties to Atlanta took with it the work available for light duty. The Union is obliged to prove that light duty work existed at the time of this grievance; it has not done so.

CITED/RELEVANT PROVISIONS OF THE AGREEMENT LOCAL MEMORANDUM OF UNDERSTANDING AND APPLICABLE REGULATIONS

AGREEMENT

Article 13 - Assignment of Ill or Injured Regular Work Force Employees*

Article 19 - Handbooks and Manuals*

(Jt Ex 1)

MEMORANDUM OF UNDERSTANDING

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

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

(Jt Ex 2)

EMPLOYEE AND LABOR RELATIONS MANUAL

540 Injury Compensation Program

(Various provisions cited)*

(Un Ex 4)

THE ISSUES

1. Did the Union demonstrate that the Service violated the Agreement or related regulations by the case presented relative to the events on September 16, 1987 or by those events complained of subsequent to that date; if so, what is the proper remedy?

2. Did the Union demonstrate violation of the Agreement by not providing him eight hours of work at the Decatur facility commencing October 1, 1987; if so, what is the proper remedy?

DISCUSSION AND FINDINGS

The Union bears the burden of proof in these disputes, which the parties have decided to present together since they involve sequential events arising out of the same background

*Not reproduced here for sake of brevity.

event. Essentially, the grievant contends he sustained an on-the job injury on September 16, 1987, the validity of such claim to be determined by OWCP. It is asserted by the Service (and not refuted by the Union) that such claim eventually was denied by the Department of Labor agency. Nonetheless,the Service is obliged to cooperate with and assist an employee in the filing of such claim -- even if it subsequently contests such claim. The Union asserts with apparent good cause (since the Service did not see fit to produce testimony to refute it) that the grievant's supervisor was not responsive to his request for the form(s) to make a claim and then did not cooperate in its completion until the grievant complained to the postmaster. Under the Service's own regulations, it is a supervisor's obligation to facilitate the notice/filing procedure for a claimed injury; no authority exists to make a judgment as to whether such an injury exists or to issue such form(s) on convenience. According to the record presented, the claim for benefits was denied and the delay in issuing and executing the CA-1 and/or CA-16 might have been academic in retrospect. The Service holds employees to specific time limits in the claim of traumatic injury and obviously did not intend for supervisors to act on such matters at their own whim or fancy as evidenced by Part 554.18 of the Employee and Labor Relations Manual:

> 544.18 Any postal official who is responsible for completing the immediate supervisor's report of injury is guilty of a misdeameanor if the official:
>
> a. willfully fails, neglects, or refuses to make any reports to OWCP;
>
> b. knowingly files a false report;

c. induces, compels, or directs any employee to forego filing a claim under the FECA; or

d. willfully retains any notice, report, claim or paper which is required to be filed under the FECA. **Such an official may be subject to a fine up to $500 or imprisonment for up to 1 year, or both.**

(Un Ex 4)

The authority to determine a violation of this provision is deemed to be beyond the scope of this arbitrator, but the provision is worth reproducing here for sake of emphasis. To summarize on this point, while technical error on the part of the Service is demonstrated on the record, no monetary or other relief of substance is considered to exist within the arbitrator's authority. It also follows that the demand for placement of the grievant in COP status is beyond the scope of authority, since such judgments are reserved to OWCP. One final point should be addressed on the September 16, 1987 incident; the grievant was within his protected rights to refuse to perform tasks which he felt were beyond his medical restrictions and had the protection of the grievance-arbitration procedure in doing so.

Insofar as Case S7N-3E-C 1860 is concerned, the grievant was free to accept the eight-hour light duty in Atlanta if he chose. The Union is in error in its assertion that the Service was <u>obliged</u> to provide such an assignment at the Decatur facility. It is well-established in the relationship between these parties that <u>light</u> duty is clearly distinguishable from <u>limited</u> duty, in that the latter is related to work assignments arising out of job-related injuries or illness and mandate an effort on the part of the Service. In contrast, no obligation to provide eight hours of work for employees injured away from work -- or in situations

where claims of job-related injuries are denied by OWCP. Via the Local Memorandum of Understanding (LMU), the parties at Decatur have agreed to earmark certain duties for limited/light duty assignments, but such assignments cannot be implemented to the detriment of normal work schedules or bids of regular work force employees. The Union asserts, but offers no substantive proof, that sufficient work under Item 17 of the LMU was available at the Decatur facility for the time period the grievant was off duty after refusing the light duty assignment in Atlanta (October 1, 1987 to December 31, 1987). Simply put, the mere assertion that such work was available does not meet the necessary burden of proof.

AWARD

The Service violated applicable regulations when it failed to timely issue applicable forms to the grievant and to timely assist in their completions; however, such violation was technical in nature and the remedy sought is inappropriate. Otherwise, the Union has failed to demonstrate that the Service violated the Agreement or applicable regulations.

James F. Scearce
Arbitrator

Atlanta, Georgia
September 30, 1989