

C# 11016

REGULAR ARBITRATION PANEL

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

GRIEVANT: Sandra G. Muller

POST OFFICE: Parkersburg, W. Va.

UNITED STATES POSTAL SERVICE

and

AMERICAN POSTAL WORKERS
UNION, AFL-CIO

BEFORE: Wayne E. Howard, ARBITRATOR

APPEARANCES:

For the U. S. Postal Service: Maggie Fisher

For the Union: Tommy Harper

Place of Hearing: Parkersburg, West Virginia

Date of Hearing: November 16, 1990

AWARD: The Service is directed to award those step increases to the grievant, Clerk Sandra G. Miller, which she would have acquired in her former position had there been no injury or disability.

DATED: December 7, 1990


Wayne E. Howard
Arbitrator

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|----------------------------------|---|----------------|
| In the Matter of the Arbitration |) | CASE NO. |
| |) | E7C-2M-C 12066 |
| between |) | |
| UNITED STATES POSTAL SERVICE |) | GRIEVANCE OF |
| |) | MULLER |
| and |) | |
| AMERICAN POSTAL WORKERS |) | OPINION OF |
| UNION, AFL-CIO |) | ARBITRATOR |
| |) | |

BACKGROUND OF THE CASE

Ms. Sandy Muller was originally employed by the Service as a Carrier in Ithaca, New York. She was injured on the job on April 7, 1978 and subsequently retired on disability. In 1982 and 1983, she underwent evaluation by the OWCP and on the latter date was determined to be recovered and employable. In the interim she had moved from New York to Parkersburg, West Virginia, and on January 5, 1985 was rehired by the Service at that location as a Part-time Clerk. At the time of her injury she was a Level 5, Step 6 Carrier at a pay rate of \$7.11 per hour. She was rehired as a Level 5, Step 6 Clerk at a pay rate of \$11.22 per hour.

On June 16, 1988 Ms. Muller learned from a fellow employee who had been injured and returned to work under the rehabilitation program that when she returned to work she received all of her step increases she would have received if working during the period of her disability.

Ms. Muller grieved the failure of the Service to treat her in a similar manner, and unable to adjust the grievance to its satisfaction, the Union requested arbitration of the issue.

POSITIONS OF THE PARTIES

The Union essentially contends that there is nothing in the Injury Compensation Manual, Handbook EL-505, nor in the Employee and Labor Relations Manual (ELM) which would justify a difference in the treatment of the grievant with that of employee Virginia Hedrick.

The Service maintains that while employee Hedrick had only partially recovered from her injuries, the grievant had fully recovered from her injuries. Both the ELM and prior practice forces the Service to treat return under these conditions differently.

OPINION

The rights of employees injured on the job but fully recovered after one year are covered in Handbook EL-505, Section 553.2 and in the ELM, Section 546, 13. These state, in relevant part:

553.2 Fully Recovered After One Year

****Upon reemployment, all rights and benefits that an employee would have had or acquired in the former position, had there been no injury or disability must be restored (ELM 546.1) Joint Ex. 4

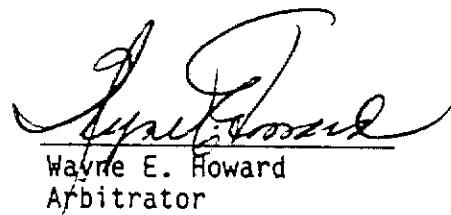
Section 546.13 Disability Fully Overcome More Than 1 Year546.132 Rights and Benefits The same as 546.122

Section 546.122 which concerns the rights and benefits of employees whose disability is overcome within 1 year has the identical language as Section 553.2 of the EL-505, cited supra. Moreover, 553.1 of the EL-505, which deals with rights of employees fully covered within one year contains the same language with respect to rights and benefits as Section 553.2. The only

conclusion from the manuals is that there is no difference in the treatment of employees with respect to rights and benefits in relation to the time necessary for full recovery, i.e. whether it was within or whether it was more than one year.

Since the Service indicated it was on this basis that the difference in treatment of step increases had developed, the difference in treatment has no basis under the Agreement, for the language of these manuals is integrated into the Agreement by Article 19 thereof. It is also well established that past practice cannot be used to overturn the clear and unequivocal language of the Agreement. Thus, whatever practice evolved at the installation in conflict with the language of the manuals creates no independent rights for the Service in the treatment of such employees.

For these reasons, the Service is directed to award step increases to the grievant that she would have acquired in her former position, had there been no injury or disability. The grievant's claim for interest, however, is disallowed.



Wayne E. Howard
Arbitrator