

REGULAR ARBITRATION PANEL

In the Matter of Arbitration)
Between) Grievant: Karl King
United States Postal Service) Post Office: Hartford, CT
and) Case No: B11N4BC16080913
National Association of) Union No: 16-06118-10
Letter Carriers, AFL-CIO) DRT # 14-359897

Before: EILEEN A. CENCI

Appearances:

For United States Postal Service: Glenn Smith

For National Association of Letter Carriers: George Laham

Place of Hearing: Hartford, CT

Date of Hearing: June 7, 2016

AWARD: Management did not violate Articles 13 and 30 of the National Agreement, specifically Items 15, 16 and 17 of the Hartford Local Memorandum of Understanding (LMOU) when they failed to provide the grievant with light duty that exists within his restrictions, up to 8 hours per day and 40 ours per week, despite his placement on the Hartford Light Duty List.

Date of Award: July 14, 2016

Regular Regional Arbitration Panel

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VICE PRESIDENT'S
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NALC HEADQUARTERS

Eileen A Cenci

Eileen A. Cenci

OPINION

STATEMENT OF PROCEEDINGS:

This matter was arbitrated pursuant to the grievance and arbitration provisions of a collective bargaining agreement (National Agreement) between the United States Postal Service (Service) and the National Association of Letter Carriers (NALC or Union). A hearing was held before me on June 7, 2016 in Hartford, Connecticut. The parties appeared and were given a full and fair opportunity to be heard, to present evidence and argument and to examine and cross-examine witnesses.¹ Each party called witnesses who testified under oath. At the conclusion of the testimony the parties gave oral closing arguments and the record was closed on the day of hearing. The arbitrator subsequently requested and was granted an extension until July 14, 2016 to render the decision.

ISSUE:

The parties agreed to adopt the issue framed by the B Team:

Did management violate Articles 13 and 30 of the National Agreement, specifically Items 15, 16 and 17 of the Hartford Local Memorandum of Understanding (LMOU) when they failed to provide the grievant with light duty that exists within his restrictions, up to 8 hours per day and 40 hours per week, despite his placement on the Hartford Light Duty List?

If so, what is the proper remedy?

¹ The grievant objected to being represented by the Union advocate and alleged a conflict of interest. The advocate explained that he had been assigned to represent the grievant because the grievant had brought charges against all other members of the Executive Board. The Union, after consulting an attorney, decided to proceed with the case since it raised important contract issues. The grievant remained in the room throughout the hearing. Both parties conducted themselves in a professional manner throughout the hearing and presented relevant evidence and thorough, cogent arguments in support of their respective positions.

FACTS:

The grievant was a letter carrier assigned to the Silver Lane Station of the Hartford Post Office. In September 2015 the grievant submitted a request for light duty, which was approved. His restrictions at the time permitted him to deliver his route and he was placed on the light duty list and worked eight (8) hours per day and forty (40) hours per week.

The grievant submitted a new request for light duty on January 5, 2016. The medical restrictions on the new request limited him to lifting no more than 10 pounds, prohibited reaching above the shoulder, and limited him to walking and standing for one hour at a time. The narrative section of the request stated that light duty was recommended “i.e. manager night supervisor or other inside position.”

Supervisor, Customer Service Michael Chiaro reviewed the grievant’s January 2016 light duty request and medical restrictions and also spoke to Manager, Customer Service Donella Hardy about the request. Manager Hardy understood some of the restrictions but sent the form to Officer in Charge (OIC) Christopher Rogers to have him discuss the restrictions with the grievant.

OIC Rogers spoke to the grievant to clarify his restrictions. The grievant told Mr. Rogers that he could only do inside work and could only stand for an hour. The grievant said he could answer telephones and Mr. Rogers replied that they would not allow someone to remain on the clock waiting for the telephone to ring. Mr. Rogers’ understanding of the grievant’s restrictions after the two men spoke was that the grievant could only perform one hour of work per day and that it had to be inside.

The grievant’s January 2016 light duty request was approved and he was placed on the light duty list. He was assigned work casing his route and sent home most days after he completed that assignment or after approximately one hour of work. OIC Rogers offered the grievant work doing Express Mail or collections, but the grievant said that he was unable to do any work on the street. It was not possible to assign the grievant to another craft in the Silver Lane office.

After Manager Hardy spoke with OIC Rogers about the grievant’s restrictions, it was her understanding that the grievant could do up to two hours of work per day, but could not do any work outside. He was limited to lifting no more than ten pounds, while the Postal Service limit

is 70 pounds. Manager Hardy participated in a 7:00 a.m. telecon each day. One of the matters discussed during that telecon was looking for available work for people on the light duty list. No additional work was available for Mr. King, since most of the available work is on the street, rather than office work.

The grievant's medical restrictions changed again as of March 26, 2016, when he was able to resume delivery of his route. At that time forty hours of work per week was again available to him.

The Union filed a grievance claiming that the grievant was improperly denied eight hours per day and forty hours per week of work between January 7, 2016 and March 26, 2016. The grievance was denied at the lower levels of the grievance process and appealed to arbitration after the B Team reached impasse.

Thomas Cronin, Executive Vice President of Branch 86, testified at arbitration that ten people are allowed on light duty within the Hartford installation. The installation consists of nineteen (19) offices. Mr. Cronin did not believe any carrier on the light duty list had ever been sent home for lack of work.² He spoke to OIC Rogers about the fact that the grievant was being sent home in January 2016 and Mr. Rogers said that management would not manufacture work for him. Mr. Cronin testified that another employee, Shadrick Dinkins, was working eight hours with similar restrictions. Mr. Dinkins answered the telephone and tracked packages among other duties. The Union claimed that management was unwilling to make the same arrangement for the grievant.

Supervisor Chiaro testified at arbitration that Mr. Dinkins had an OWCP claim and management therefore had a different obligation to find work for him than for the grievant. Mr. Chiaro did not contact the District looking for work for the grievant since the Connecticut District is huge and includes Rhode Island. He did not consider it feasible to send an employee with such severe medical restrictions outside the geographical area. Had the grievant been able to perform additional productive work, such work was available to him within the Hartford area.

OIC Rogers testified at arbitration that Item 17 of the LMOU, which lists light duty

² This was disputed by Supervisor Chiaro, who testified that some light duty employees have punched out and gone home in the past. Some of those have used sick leave for the time when there was no productive work available to them.

assignments, refers to permanent light duty assignments. Mr. Rogers testified that the list has been part of the contract for up to thirty (30) years and is somewhat outdated at this point, given the amount of automation and the decreasing mail volume in the intervening years. Office time has decreased from approximately four hours per day when the list was written to one hour per day now. The majority of the items on the list are obsolete, according to Mr. Rogers. For example, there is minimal work re-writing Carriers' route books (#5). Work labeling the inside of apartment boxes (#6) is obsolete. Training work (#7) is only available to certified trainers and the grievant did not meet that criterion. The job of answering telephones (#10) is primarily done by supervisors.

The grievant participated in the District Reasonable Accommodation Committee (DRAC) process where his restrictions were discussed and he was offered work within his restrictions. He did not accept any offer made by the committee and his case was closed.

The grievant received unemployment compensation from the State of Connecticut Department of Labor for the hours he was not employed by the Postal Service during the time period in question. His compensation was \$6160.00 with an additional dependent payment of \$495.00.

CONTRACT:

Article 13

Section 4. General Policy Procedures

Article 13 Assignment of Ill or Injured Regular Workforce Employees

Section 13.2 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. The request shall be supported by a medical statement from a licensed physician or by a written statement from a licensed chiropractor stating, when possible, the anticipated duration of the convalescence period. Such employee agrees to submit to a further examination by a physician designated by the installation head if that official so requests.

...

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 4. General Policy Procedures

- A. Every effort shall be made to reassign the concerned employee within the employee's present craft or occupational group, even if such assignment reduces the number of hours of work for the supplemental work force. After all efforts are exhausted in this area, consideration will be given to reassignment to another craft or occupational group within the same installation.

LOCAL MEMORANDUM OF UNDERSTANDING (LMOU)

Item #15

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

- A. The method to be used in reserving light duty assignments within the Carrier craft will be to place them on the same tour whenever possible and on an as needed basis.
- B. The Employer agrees to put up to ten (10) incapacitated Carriers on light duty assignments within the Carrier craft when work is available.
- C. The installation head will contact the District for available assignments if no work is available within the installation.
- D. The Branch 86 President will notify the installation head of work available at other Post Offices.

Item #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.

- A. Request(s) for permanent light duty will be put into writing and submitted to the installation head for approval. The request will be supported by medical proof of illness or injury and state the anticipated duration of the convalescence in order to be allowed permanent light duty.
- B. Management will establish work for employees consisting of eight (8) hours or less within their tour if practicable.
- C. In the event there is none or insufficient light duty assignments available in the Letter Carrier

craft, Carriers may be assigned to other duties on tour one and/or 3 for additional hours.

- D. The Postmaster will make every effort to employ Letter Carriers in their own office for light duty assignments.

Item #17

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

- A. Light duty assignments within the stations and branches for Letter carriers may include, but not be limited to the following:
1. Casing Mail on his/her route;
 2. Casing mail on routes assigned by the Supervisor;
 3. Assisting routes by setting up mail;
 4. Coverage of suitable collection routes;
 5. Re-writing Carriers' route books;
 6. Labeling inside of apartment boxes;
 7. Training employees when, in fact, training is done at the Station level and only if the injured employee is a certified trainer.
 8. Keeping P.S. Forms 3982s updated when regular Carrier is instructed by Supervisor;
 9. Delivering parcel post on overburdened routes when it is medically approved and not in conflict with the Physicians' orders;
 10. Answering phone calls within the delivery unit.

POSITIONS OF THE PARTIES:

NATIONAL ASSOCIATION OF LETTER CARRIERS (UNION)

Management violated Article 13, the ELM and the LMOU by sending the grievant home after he cased his route between January 7, 2016 and March 26, 2016. The grievant was capable of working up to 8 hours per day and no real effort was made to locate work within his medical restrictions. The Union does not believe any other carrier on the light duty list in the Hartford installation has ever been sent home due to lack of work. In January 2016, only two carriers on the list were restricted from doing deliveries. These were Mr. Dinkins and the grievant, and Mr. Dinkins was given work answering the telephone.

Management did not give the grievant's light duty request every consideration as required by contract. He was not offered reassignment to another craft and there is no evidence that management contacted other offices in the district to locate work.

Management also violated Article 13.2.C when it failed to put its denial of the grievant's

request in writing and state the reasons for it.

The Union asks that the grievance be sustained and that the grievant be made whole for the hours he was denied light duty.

UNITED STATES POSTAL SERVICE (SERVICE)

The Union has the burden of proving that management failed to meet its contractual obligation to provide the grievant light duty work that existed within his medical restrictions and it has not met that burden.

There is no guarantee under the contract or LMOU that light duty employees will be given eight (8) hours of work per day or forty (40) hours per week. It is untrue that all employees on the light duty list at the Hartford Post Office have always been given eight (8) hours of work per day and forty (40) hours per week.

The grievant's requests for light duty were approved and he was provided with the work that existed within his limitations. There was no available, productive work that the grievant could have performed within his very strict limitations between January 7 and March 26, 2016, beyond the one hour casing his own route. At that time he was unable to stand or walk for more than an hour at a time and was unable to lift more than ten pounds.

The grievant refused the offer of an additional hour of work on the street and refused the accommodations offered by the DRAC. The Service was not obligated to create work that did not exist within the grievant's extreme restrictions.

The grievant's situation was not comparable to that of employee Dinkins, who had an OWCP claim and was provided additional work answering telephones on the basis of his work-related injury.

The Service asks that the grievance be denied.

DISCUSSION:

It is well established that management has no obligation to make work for light duty employees or to provide them with a full eight hours of work per day or forty hours per week [See, Arbitrator Mittenthal decision in Case #H1C4EC35028 (1987)]. Management does have an obligation to "show the greatest consideration" for every request, to give each request careful

attention, and to reassign employees to the extent possible in the employee's office. It has further obligations to consider reassignment to another craft or occupational group within the same installation if no work is available in the employee's office and, under Item 15C of the LMOU, to contact the District to locate available work if nothing is available within the installation. Management did not violate its obligations to the grievant in this case.

With respect to the argument that management violated Article 13.2.C by failing to put its denial of the grievant's request and the reasons therefor in writing, it must be pointed out that the grievant's requests for light duty were approved, not denied. He was on the light duty list in both September 2015 and January 2016 and was assigned full-time light duty work before his restrictions changed substantially in January 2016. The obligation to put the denial of a light duty request in writing, and explain the reasons for such denial, did not apply.

Although the Union claims that everyone on the light duty list has always been provided with eight (8) hours per day and forty (40) hours of work per week, this is disputed by management. There is, in any case, no obligation on the part of management to provide that amount of work if it does not exist.

The grievant's restrictions as of January 2016 were extremely limiting. He could only walk or stand for an hour at a time. After OIC Chris Rogers spoke to the grievant to clarify his restrictions, his understanding was that the grievant's total work capacity was one hour per day of inside work. Management offered the grievant an additional hour of work on the street each day but the grievant refused that offer, saying he could only work inside.

The salient issue in this case is whether management made a good faith effort to locate additional work for the grievant, consistent with its obligation to give his request "the greatest consideration." It must be noted at the outset that if the grievant was restricted to one hour of inside work each day, which was the understanding of OIC Rogers after he spoke to Mr. King, no search for additional work was required. The grievant was provided one hour per day of inside work and refused the offer of an additional hour each day of outside work. He also refused accommodations offered by the DRAC.

The evidence further supports a conclusion that an effort to locate additional work was made, even if it was unclear how much additional work the grievant was capable of performing. The matter was discussed in daily telecons. No office work at other locations in the Hartford

area was available and no reassignment to another craft at the Silver Lane office was possible.

The Union argues that management was obligated under Item 15C of the LMOU to contact the District to locate additional work. While one Supervisor, Mr. Chiaro, testified that he did not contact the District, there is no evidence as to whether other managers or supervisors undertook such an effort. It seems obvious, however, that working at locations throughout a wide geographical area would have conflicted with the grievant's medical restrictions, especially as he explained those restrictions to OIC Rogers. It is unlikely that a person limited to performing strictly office work for one hour per day or, at most, one hour at a time, could have commuted to offices outside the Hartford area after working for an hour in his home office. The grievant was offered the opportunity to deliver Express Mail and parcels or do collections within the Hartford area and was unable to perform that work. Under the circumstances, it would not have been unreasonable for management to conclude that commuting long distances after working for an hour at Silver Lane would have conflicted with the grievant's medical restrictions.

The grievant's requests for light duty were approved and he was offered the office work that was available within his severe medical restrictions between January 7 and March 26, 2016. He declined offers of additional work that exceeded his medical restrictions, and also declined offers of accommodation. The Postal Service made efforts to locate additional work within the grievant's severe restrictions but was unable to do so. The Postal Service complied with its obligations under Article 13 and the Hartford LMOU, and the grievance must therefore be denied.