

John Caraway 2/12/85 Won
Art. 13 - Light Duty, Compensation
AIRS #4548

UNITED STATES POSTAL SERVICE
AND

AMERICAN POSTAL WORKERS
UNION, AFL-CIO

26607
Re: S1C-3Q-C-2667
Grievance of Ed Fairley
Place of Hearing - Hattisburg, MS
Date of Hearing - January 23, 1985

APPEARANCES:

FOR THE UNION: James W. Walter, Vice-President

FOR THE POSTAL SERVICE: John Hyatt, Labor Relations
Representative

ARBITRATOR: John F. Caraway, selected by mutual
agreement of the parties.

The grievant is a distribution clerk employed by the Post Office in 1978. He is a disabled veteran, having sustained a medical injury during military service. He was the former Union president and the Union Chief Steward at one time. Mr. Fairley was unable to work from June 9, 1983, to June 17, 1983 due to problems with his right shoulder. He was out with a stomach problem from June 23, to July 10, 1983. He returned to work on July 11, 1983. He was told that he would not be permitted to work until he had an acceptable medical release. He went to the Veterans Administration on July 11, 1983. He got the necessary forms and gave them to his supervisor. This report from the Veterans Administration gave no restrictions for lifting up to 100 pounds, but said he could not walk, stand, sit, stoop, or kneel performing job duties. The doctor's note

stated "Tendonitis, right shoulder." Because of the confusing medical reports, Mr. Fairley returned to the Veterans Administration on July 29, 1983. This medical report restricted lifting over 10 pounds but authorized walking, standing, sitting, stooping, and kneeling. He had a severe muscle weakness. The doctor's note state that physical therapy was advised, but surgery was not indicated.

On September 1, 1983, the Union filed a grievance on behalf of Mr. Fairley stating the Postal Service violated his contractual rights by refusing to place him on light duty. On September 2, 1983, Mr. Fairley turned in a permanent light duty assignment request to Postmaster Spiers. He was advised that he did not qualify for permanent light duty in that he did not have the required five (5) years of service. He would not have the five years until December 30, 1983. Therefore, Mr. Fairley filed a temporary light duty request on September 7, 1983.

Postmaster Spiers sent Mr. Fairley to Dr. Bomboy for examination and report. Dr. Bomboy state that Mr. Fairley suffered a permanent restriction in his right shoulder. He recommended that he not perform any activities that require him to reach above shoulder level.

The Postal Service stated that Postmaster Speirs had offered Mr. Fairley a custodian job on or about September 6, 1983. According to Postmaster Speirs and Mrs. McCullar, Mr. Fairley

rejected the custodian's job, saying he wanted a clerk's job. This offer was repeated several times after September 5, 1983 but each time was rejected by Mr.Fairley. Postmaster Speirs stated that after September 26, 1983, they again offered Mr. Fairley a custodian job, but it was refused. The Union asked that Mr.Fairley be placed in a clerk job and perform such work as handling postage due, boxed mail, and other work that he could perform with his left hand and did not require reaching overhead.

Mr.Fairley was temporarily assigned to Gulfport, Mississippi facility and performed the duties of distribution clerk from August 13, 1984 to August 24, 1984. This temporary assignment was extended through September 7, 1984. The report, dated October 3, 1984, concerning his performance, stated that he performed approximately 68% as efficiently as the regular clerk. On September 9, 1984, he performed approximately 63% as efficiently as the same comparative clerk. The supervisor of mail processing said that Mr.Fairley's physical limitations disqualifed him from qualifying as a distribution clerk. By letter dated October 26, 1984, Mr.Fairley was again reemployed in a light duty assignment effective October 26, 1984.

In its grievance, the Union asked that Mr. Fairley be given back pay from July 11, 1983 to October 26, 1984 less the amount received by him for the assignments which he had worked at Gulfport, Mississippi.

The Postal Service raised the issue of the arbitrability

of the grievance. The argument made was that no written light duty request was made (Article 13, Section PB, pg. 1).

ISSUE

- I. Is the grievance arbitrable?
- II. Did the Postal Service violate the National Agreement by refusing to place Mr. Fairley on temporary light duty on or about July 11, 1983? If so, is the Postal Service liable for back pay and benefits from July 11, 1983 to October 26, 1984 less sums received by Mr. Fairley from temporary assignments?

ARGUMENT

I. Arbitrability

The Postal Service maintains that the clear language of Article 13, Section 2, B.1 requires any employee desiring to go on light duty to submit light duty request in writing. This was never done on or about July 11, 1983 as contended by the Union. The Union grievance was not filed until September 1, 1983. The first light duty request was on September 2, 1983 and requested permanent light duty. Mr. Furley was disqualified for this type light duty as he did not have the required five years of service until December 30, 1983. He subsequently filed another light duty request on September 7, 1983. Both the light duty requests were untimely filed and were, in fact, filed after the grievance period.

The document filed as Exhibit 1, dated July 6, 1983, is not a written light duty request. It is from the Veterans Administration and only describes the medical condition of Mr. Fairley and imposes restrictions. It cannot be construed

as a request for light duty. Mr. Fairley never complied with with the National Agreement to secure light duty. The Postal Service acted properly in denying this grievance.

The Union maintains that Mr. Fairley did request light duty on July 6, 1983. It was denied by Supervisor Grant on the date of July 11, 1983. Supervisor Grant specifically refers to Mr. Fairley's light duty slip. Thereafter, the denial of light duty to Mr. Furley was completely in violation of the National Agreement. The Postal Service never in writing rejected his request for light duty.

The Union maintains that Mr. Fairley should have been on light duty until December 30, 1983 when he had acquired 5 years of service. At that time temporary light duty could have been converted into permanent light duty.

II. MERITS

The Union maintains that Mr. Fairley should have been placed on light duty. All of the medical evidence showed that he had a disability of his right shoulder which originated during his military service. Medical reports of the Veterans Administration by Dr. Bomboy verified that the grievant was suffering from a disability of the right shoulder. He could not perform the normal duties of distribution clerk, he could perform duties which did not require that he lift his right arm and hand over his head, such as casing of mail. He even attempted to get the Postal Service to give him a tryout to see exactly what he could do. These requests made specifically in September, 1983 were rejected by the Postal Service. He was able to perform distribution clerk's duties at the Gulfport

Mail Facility in a satisfactory manner for approximately two weeks. On October 26, 1984, the Postal Service ordered that he be rehired. He was performing the same work after being rehired under the medical restrictions of not being able to lift over his head.

The Union maintains that Mr. Fairley was not offered a custodian job in September, 1983. He would have accepted had it been offered to him.

The Postal Service argues that it made every effort to treat Mr. Fairley in a fair and just manner. There was not animosity against Mr. Fairley because he was a Union official.

The Postal Service contends that Mr. Fairley could not perform any work of the distribution clerk as he could not lift his right arm over his shoulder. One of the primary functions of the distribution clerk is to case mail and he simply could not perform this duty. There is no point giving Mr. Fairley a tryout because his medical limitations prevented his performing effectively in the job. Insofar as other job duties were concerned, such as postage due, the functions were assigned to other distribution clerks and were part of their regular daily assignment. The Postal Service is not required to make work for Mr. Fairley.

The Postal Service maintained that it made

every opportunity to place Mr.Fairley in a job within his physical capabilities. On or about September 6, 1983, Postmaster Spiers offered Mr.Fairley the custodial job. He refused and insisted that he have a clerk's job. After September 6, 1983, he was offered this job on a number of different occasions. Postmaster Spiers cited specifically offering him the custodian job again after September 26, 1983 when he had seen Dr. Bomboy. Again, Mr.Fairley refused. The Postal Service denies that it ever withdrew its offer to have Mr.Fairley work as custodian. When the offer was made, Mr. Fairley consistently rejected the offer for this job.

DECISION

Article 13, Section 1.B expresses the intent of the Postal Service and the Unions that they will assist employees who are disabled and unable to perform their regular assigned duties through injury or illness. Section 2 of Article 13 deals with both temporary reassessments and permanent reassessments. Subsection A permits an employee who is temporarily disabled from an illness or injury, and cannot perform his assigned duties, to submit a written request for temporary assignment to light duty. This request must be submitted by proper medical documentation, which contains the anticipated duration of the convalescence. Subsection B deals with permanent reassessments, and likewise requires that the employee submit a request for light duty. This provision applies to a ill or injured employee with a minimum of five (5) years with the Postal Service or a employee who has sustained an injury on the job, regardless of

years of service. Again, medical documentation is necessary to support the disability of the employee requesting light duty.

The evidence demonstrates that Mr. Fairley was disabled from performing his regular duties from June 9, 1983 to June 17, 1983 due to the disability of his right shoulder. Apparently, he overcame this particular disability, but then suffered an attack of stomach ulcers, which hospitalized him, and required that he be under medical care of Dr. Gillespie from June 23, 1983 to July 10, 1983. When he presented the doctor certificate of Doctor Gillespie to Supervisor Grant, it was rejected. Supervisor Grant then notes in his letter to Mr. Fairley of July 11, 1983, that (Joint Exhibit 2-pg. 11) that the light duties slip had been furnished to Mr. Fairley by the Veterans Administration and stated "light duty-no lifting, pulling, pushing, or overhead reaching with the right arm until after August 1, 1983". The Veterans Certificate of Visit Form was dated July 6, 1983. It is important to note that between July 6 and July 11, Mr. Furley requested light duty because of the disability of his right shoulder.

Based upon Mr. Fairley's understanding that he needed to secure medical documentation attesting to his disability, he went to the Veterans Administration for a medical examination. This was on July 11, 1983. Tendonitis of the right shoulder was noted and he was to return on August 1, 1983. Because of the confusion in the physical limitations aspect of the medical report, Mr. Furley was instructed to return to the Veterans Administration for another report. It is pertinent to the issue of whether light duty request was filed is the caption of the letter of

July 29, 1983 which was signed by Postmaster Spiers. It reads "Light Duty Request/Report". The examining physician noted disability of the right shoulder and severe muscle weakness. He observed that Mr. Fairley needed physical therapy, but no surgery was indicated.

There was no action taken by either the Postal Service or Mr. Fairley during the month of August to clarify his status. The only activity was a release and the medical certificate from Dr. Gillespie dated August 31, 1983, addressed to the Post Office, Hattisburg, Mississippi attesting that Mr. Fairley was under Doctor Gillespie's care for treatment of the injury to his right shoulder and that he was unable to raise his right arm above his head. She concluded by stating "The patient is able to perform light duties".

The arbitrator is convinced that Mr. Fairley did request light duty, and that this request was known to the Postal Service. The letter of Supervisor Grant refers to the light duty slip furnished the Postal Service from the Veterans Administration. Apparently, this slip would not have been furnished unless it was accompanied by a request that Mr. Fairley be placed on light duty. Further, the letter of October 26, 1984 putting Mr. Fairley on light duty has this sentence "Mr. Fairley is to be employed in a light duty assignment as per his previous request." While the Postal Service argues that no written request was submitted until September 2 or September 7, 1983, which was after the filing of the grievance of September 1, 1983, the fact remains that an oral request for light duty was made

by Mr. Fairley. Most importantly, he made every effort to provide the necessary medical documentation, as requested by Management, in order to satisfy Management that he was, in fact, disabled and the extent of his disability. During the entire month of July, while Mr. Fairley was engaged in securing this medical documentation for the Postal Service, no member of management ever advised him that it was necessary that he file a written request to be placed on light duty. In view of Mr. Fairley's earnest efforts to secure the required medical documentation, it was incumbent upon management to advise him of the necessity of filing a written request for light duty, if Management felt that this was necessary.

The Arbitrator notes the ruling of arbitrator McConnell, dated November 11, 1983, in Case #E1N-2W-C-6834 where the Postal Service made the very same argument. Arbitrator McConnell stated on page 5:

"I am inclined to support the Union position, since Stapleton had made an oral request with acceptable medical evidence, if Management believed that a written request was necessary, Management had the obligation to inform Stapleton of that fact."

The Postal Service argues that the grievance, filed on September 1, 1983, was untimely even if the light duty request of July 11, 1983 is deemed proper. It must be filed within the fourteen day time period. But, the light duty request was a continuing one. The Postal Service advised Mr. Fairley that the Veterans Administration medical report of July 11, 1983 was unacceptable. He returned to the Veterans Administration on July 29, 1983 to secure another report.

Even as late as August 31, 1983, Mr. Fairley saw Doctor Gillespie and secured a medical statement regarding his ability to perform light duty. The grievance of September 1, 1983 was timely filed in view of the continuing refusal to place Mr. Fairley on light duty.

The Postal Service should have placed Mr. Fairley on temporary light duty in view of his timely request and his unquestioned physical disability.

REMEDY

The Union asks for back pay from July 11, 1983 to October 26, 1984 at the Distribution Clerk's pay rate less the time worked in August and September, 1984. The Union also requests restoration of annual and sick leave used by Mr. Fairley during this time period.

The Arbitrator will award Mr. Fairley back pay from July 11, 1983 through September 6, 1983 at the Distribution Clerk's pay rate. September 6, 1983 is a critical date because the evidence shows that Mr. Fairley was offered a Custodian job which he refused. There was no justification for his refusal. He should have accepted the Custodian job pending his reassignment to the Distribution Clerk's job.

At this point, the Arbitrator is faced with a dilemma. While he believes that Mr. Fairley should have worked the Custodian job, he would have been so assigned only for a reasonable period of time until he was assigned to the Distribution Clerk's job. Delaying reassignment of Mr. Fairley to Distribution Clerk until October 26, 1984 was unreasonable.

The Postal Service should have resolved his situation within six months, or by March 6, 1984.

A fair and equitable resolution of this problem requires payment of back wages at the Distribution Clerk's pay rate from March 6, 1984 to October 26, 1984 less the wage payments in August and September, 1984.

Regarding annual or sick leave used by Fairley, the only Form 3971 pertaining to this time period was 40 hours of annual leave from July 25, 1983 to July 31, 1983. The Postal Service shall restore this to Mr. Fairley.

AWARD

The Union grievance is sustained. I. The grievance is arbitrable. II. The Postal Service violated the National Agreement by failing and/or refusing to place Mr. Fairley on light duty.

The Postal Service shall pay Mr. Fairley back wages at the Distribution Clerk's rate of pay from July 11, 1983 through September 6, 1983 and from March 6, 1984 to October 26, 1984 less wage payments to Mr. Fairley in August and September, 1984. Wages from other employment shall be deducted.

The Postal Service shall restore annual leave used by Mr. Fairley from July 25 to July 31, 1983

IMPARTIAL ARBITRATOR

New Orleans, Louisiana

February 12, 1985