

REGULAR ARBITRATION PANEL

In the Matter of Arbitration

between)

United States Postal Service)

and)

National Association of Letter Carriers)
AFL-CIO)

Grievant: Kirk Frazer

Post Office: North Broadway Station

G16N-4G-C 20028535

DRT: 10-487029

Local: 421-1241-19

BEFORE: Thomas Strapkovic, Arbitrator

APPEARANCES:

For the U.S. Postal Service:

Jonathan Kleine, Labor Relations Specialist

For the National Association of Letter Carriers:

Juan Munoz, Local Business Agent, NALC

Place of Hearing:

North Broadway Station

Date of Hearing:

May 14, 2020

Date Hearing Closed:

May 14, 2020

Date of Award:

June 13, 2020

Relevant Contract Provision/s:

Articles 13 & 30

Contract Year:

2016-2019

Type of Grievance:

Contract/Light Duty

AWARD SUMMARY:

The Postal Service violated Article 13 of the National Agreement, as well as, Article 13 of the LMOU. Therefore, it is ordered that the Grievant shall receive eight (8) hours of pay a day (administrative leave) from October 7, 2019, through his return to full duty. The Postal Service shall process the necessary paperwork to recredit the Grievant the leave he was charged from October 7, 2019, through his return to full duty within 30 days from the date of this award.


Thomas Strapkovic
Arbitrator

INTRODUCTION:

The hearing in this case was held on May 14, 2020, at the Rio Grande district office in San Antonio Texas before the undersigned Arbitrator who was duly appointed by the parties to render a final and binding decision in this matter. At the hearing, all witnesses provided sworn testimony and the parties were afforded full opportunity to present such evidence and argument as desired, including an examination and cross-examination of all witnesses. The record closed on May 14, 2020. The issues are defined below.

ISSUE:

Did management violate the Local Memorandum of Understanding (LMOU), Articles 13.1 through Article 30 of the National Agreement, when the installation head/designee failed to consult with the Branch President/designee regarding Grievant's (Kirk Frazer) request for Light Duty? If so, what is the remedy?

Did management violate the Local Memorandum of Understanding (LMOU), sections 2 and 3 through Article 30; the Labor Relations Manual (ELM), section 355 through Article 19 and/or Article 13 of the National Agreement when management failed to provide the Grievant with light duty work and failed to explain why his request was denied? If so, what is the remedy?

BACKGROUND:

On May 17, 2019, the Grievant, Kirk Frazer, sustained and off the job injury due to a motor vehicle accident. September 26, 2019, Grievant submitted a request for light duty to the San Antonio Postmasters office. On October 1, 2019, the Grievant's request for light duty was denied by Yvonne Lopez, Manager, Customer Service. On October 4, 2019, the Union initiated this grievance on behalf of the Grievant. On October 24, 2019, management denied the Union's grievance. The grievance was appealed to Formal Step A and discussed on November 20, 2019. The parties could not resolve this grievance and the Union appealed this grievance To the Rio Grande Dispute Resolution Team (DRT) on November 22, 2019. The Rio Grande Dispute Resolution Team issued a decision declaring the grievance an impasse on December 19, 2019. The Union subsequently appealed this grievance to arbitration.

RELEVANT CONTRACT LANGUAGE:**ARTICLE 13****ASSIGNMENT OF ILL OR INJURED REGULAR FORCE EMPLOYEES****Section 1.B**

The U.S. Postal Service and the Union recognizing their responsibility to aid and assist deserving full-time regular or part-time flexible employees who through illness or injury are unable to perform their regularly assigned duties, agree to the following provisions and conditions for reassignment to temporary or permanent light duty for other assignments. It will be the responsibility of each installation head to implement the provisions of this Agreement within the installation, after local negotiations.

Section 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 medical statement from a licensed physician or by 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 a 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 workforce. 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
Branch 421****Section 1**

In accommodation of temporary or permanent light duty assignments for the Letter Carrier Craft, the installation head/designee shall consult with Branch President, or his/her designee (1991).

Section 2

Every effort shall be made to reassign the concerned employee within his/her present craft or occupational group, even if such assignment reduces the number of hours of work for the supplemental workforce. After all efforts are exhausted in this area, the installation head/designee

has the authority to sign light duty within other crafts, in accordance with Article 13 of the National Agreement (1991).

Section 3

The following constitute duties that a letter carrier may perform in light duty status, but are not limited to:

1. Casing of mail on an employee's own route/string, or routes not covered on a day to day basis, or vacant routes, or auxiliary routes*; (1991)
2. Curb delivery Routes (for employees who are assigned to a parking loop); (1991)
3. Making case label when necessitated for service reasons, and any other duties of carrier; and (1975)
4. Light duty assignments will cover the entire city (1991).

*Casing of mail on one's own route/string while on light duty status would "Bump" or terminate a hold down assignment on that route or string (1991).

POSITION OF THE PARTIES

Union:

The Union argues that in contract cases the burden of proof rest with the Union, but in an Article 13 case, the burden shifts to the Postal Service to prove that they followed the provisions of Article 13. The Grievant sustained an off the job injury that required surgery and a convalescence period. After the period of convalescence, the Grievant's physician advised him he could return to duty with some restrictions. As such, the Grievant submitted a request for light duty to the postmaster, as required by the LMOU and the National Agreement. Management denied the Grievant's request for light duty, which generated this instant grievance. Article 13.2.C requires that the installation head make a bona fide effort to identify light duty work. It further requires management to give the matter "the greatest consideration" and "careful attention." If management does not provide the requested light duty work, it has an obligation to explain in writing why light duty work is unavailable. Disputes concerning the failure to provide light duty work may be addressed through the grievance arbitration procedure.

The Union believes that the burden of proof was shifted to the Postal Service based on the testimony of the witnesses and record evidence offered during the hearing. Management acquiesced that a violation had occurred when the Postal Service failed to meet with Branch President Boyd to discuss the Grievant's request for light duty. Branch President Boyd testified that this meeting is required so that the parties can identify work the Grievant could perform.

Management's witness, Yvonne Lopez, testified that she was unaware of the meeting requirement. Additionally, it must be noted, that there is nothing contained in record evidence that

advises the Union, in writing, that Ms. Lopez was the postmaster's designee. This clearly is a violation of the LMOU. Furthermore, Ms. Lopez testified that the Grievant was denied light duty because of his lifting restriction (5 pounds), but then testified that Grievant never submitted restrictions. The Union asserts that Ms. Lopez lacks any credibility. Even if it is assumed that the Grievant did have a 5-pound restriction, no one from management ever asked the Grievant what his pain threshold was. Ms. Lopez acknowledged that she was not aware of the Grievant's carrier duties and therefore, had no knowledge of whether or not the Grievant could perform his duties.

Therefore, the Union request that the arbitrator sustain this grievance and grant the remedy requested.

The Union submitted the following cites for authoritative and persuasive value:

G06N-4G-C 08288981	Arbitrator Stephen Dorshaw	January 6, 2009
G11N-4G-C 16195543/16439260	Arbitrator Ruben Armendariz	December 12, 2016
J11N-4J-C 17328817	Arbitrator Michael Jordan	September 4, 2017

Postal Service:

The Postal Service argues that the issue in this case is whether management unreasonably denied the Grievant's request for light duty work in violation of Article 13 of the JCAM, and when management failed to notify the branch president of the request for light duty. The Postal Service asserted that the following requirements apply to an employee seeking temporary reassignment to light duty work:

1. Any full-time regular or part-time flexible employee may request temporary light duty, regardless of length of service;
2. The request must be submitted in writing;
3. The request must be supported by medical statement from a licensed physician or by a written statement from a licensed chiropractor;
4. The employee bears any cost connected with the statement required;
5. The Employee must agree to submit to a further examination by a physician designated by the installation head, if requested;
6. The Postal Service will be responsible for any cost when it requested a second medical examination; and
7. The employee may specifically seek light duty or may seek "other assignment" within his/her medical limitations.

Article 13.2.C states:

"Installation heads shall show the greatest consideration for full time regular or part-time flexible employees requesting 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."

Rio Grande District Instruction - Light Duty Tracking Process Section IV.A. states:

"The installation head or designee must inform the employee in writing within a reasonable period of time."

The Postal Service argues that they met their contractual obligation only with one exception; management inadvertently failed to notify the Union Branch President of the light duty request. On this point, the Step B team stated that a cease and desist order was/is in order. This failure however, is certainly the exception and not the norm. In regards to management's alleged unreasonable denial of the light duty work, the Service argues it abided by the contract. The Union's grievance lacks any proper evidence. Record evidence does not contain the Grievant's original medical documentation. The Union claims it is the same as the second request; however, the Service wholeheartedly disagrees.

The Grievant was unable to perform any light duty work based on his restrictions. There was a consensus at Step B that the original medical document(s) submitted to the postmaster's office are not contained in record evidence. The Union at Step B stated that they refuse to add this document to the file because it did not represent the complete package submitted to the postmaster. This is a great unknown, but aside from the lack of evidence, management's designee conducted their search and submitted a response to the Grievant in a reasonable amount of time as required by the Rio Grande District Instruction i.e., the written response contained a reason for the denial, which was the medical restriction. The contract does not require that management provide an explanation in great detail.

The Postal Service asserts that management did not unreasonably deny the Grievance request for light duty, as the Union contends. Management considered the Grievant's restrictions and responded to this correct promptly. The Union claimed at Formal A that there was work that Grievant could perform, but provided no evidence to support this. The Union requested administrative pay for time outside of the convalescence period listed by the Grievant's light duty request. Management, in good faith, agreed at Formal A to change the Grievant's annual leave to

sick leave for his absences. Management offered at Step B to a cease and desist order for its failure to notify the branch president, but the Grievant is not entitled to any further remedy.

Therefore, the Postal Service respectfully requests that the arbitrator deny the grievance.

In support of its position the Postal Service submitted the following arbitration cites for authoritative and persuasive value:¹

G06N-4G-C 10339722	Arbitrator Patrick Halter	June 25, 2013
G11N-4G-C 16451780	Arbitrator Roberta Bahakel	October 27, 2016

DISCUSSION AND FINDINGS

In a contract case such as this, the Union is required to prove by the preponderance of the evidence that the Postal Service violated provisions of Article 13 of the National Agreement and/or the provisions of the LMOU, when it denied the Grievant light duty. If the Union establishes a prima facie case of a violation, the burden then shifts to the Postal Service. In support of their respective positions, the Union solicited testimony from Branch President, Tony Boyd, letter carrier/shop steward Pete Velasquez and the Grievant. The Postal Service solicited testimony from Station Manager, Stephen Seale and Manager Customer Service, Yvonne Lopez. Their respective testimony is summarized below.

Branch President Boyd testified that he has been employed by the Postal Service since 1998 and has served as Branch President of 421 since January 2012. Mr. Boyd testified that his duties entail negotiating the Local Memorandum of Understanding (LMOU) and handling request for light duty from letter carriers. Mr. Boyd indicated that under the provisions of the LMOU, he is required to meet with the installation head or designee to discuss applications for light duty by letter carriers. Mr. Boyd stated that it is an important provision because it permits an objective review and permits input from him regarding what work is available for light duty for letter carriers who are injured off-duty. Mr. Boyd acknowledged that light duty is not guaranteed, but rather must be viewed on a case to case basis depending on physical limitations of the letter carrier and it is at these light duty meetings where these issues are discussed.

¹ Arbitrator read the arbitrable cites provided for guidance.

Branch President Boyd indicated that there were a number of duties that the Grievant could have performed with his physical limitations, such as, casing his own route, delivering Express Mail, processing miss sorted mail etc. Branch President Boyd testified that he was not contacted by the installation head or designee to discuss the Grievant's application for light duty. If he had been contacted, he would have advised the installation head/designee of these various duties. Branch President Boyd asserted that the LMOU requires this notification to be done in writing. Branch President Boyd noted that 10 to 15 times a week he notifies the installation head in writing when an outside steward is necessary to process the grievance and did not understand why this notification process was not followed by the installation head.

Under cross-examination, Branch President Boyd reiterated that the LMOU requires the installation head to consult with him when he light duty application has been received.

Pete Velasquez has been employed by the Postal Service for the past 18 years and is the shop steward of record, as well as, the Informal A and the Formal A designee for this instant grievance. Mr. Velasquez testified that he was certified to handle this instant grievance by Branch President Boyd.² Mr. Velasquez indicated that he met at the Informal A level with Destiny Fuentes to discuss this grievance. Mr. Velasquez testified that at times it was difficult working with Ms. Fuentes because she was unfamiliar with the process of light duty. According to Mr. Velasquez, Ms. Fuentes acknowledged that there was work available the Grievant could have performed, such as, dropping the kickoffs to other carriers, handling express mail, double casing or triple casing. Mr. Velasquez indicated that they could not resolve this grievance at the Informal A and it was subsequently appealed to Formal A.

Mr. Velasquez testified that he met with Stephen Seale at Formal A. During this meeting, Mr. Velasquez advised Mr. Seale that he had some issues with his information request, in that management had failed to provide him with some necessary information. Mr. Seale acknowledged that there was work available within the Grievant's restrictions and implied that it was higher management who was blocking the Grievant's returned to work. At one point, Mr. Velasquez claimed that he was informed by Mr. Seale that the Grievant's request for light duty was denied because it had been submitted on plain paper instead of the Postal Service's form, which contained the postal logo on it. Mr. Velasquez testified that he had discussions with management

² Joint Exhibit 2 page 28.

over the concerns that the Grievant was being charged annual leave, LWOP and AWOL for his absences instead of sick leave. Mr. Velasquez stated that he and Mr. Seale resolved part of this grievance by converting the annual leave, LWOP and AWOL to sick leave on November 20, 2019.³

Under cross-examination, Mr. Velasquez acknowledged management provided several documents he had requested in his request for information (RFI).

Grievant testified that he's been employed by the Postal Service for 24 years and is currently a letter carrier on a mounted route at the North Broadway station. Grievant stated that on May 20, 2019 he suffered an off-the-job injury to his right shoulder. Grievant indicated that after he left the emergency room he reported to work and provided management with his medical documentation and advised them that he would keep them notified of any changes. Grievant indicated that on July 5, 2019 he underwent surgery. Grievant asserted that during this entire time, he kept management advised on a regular basis.

Grievant testified at some point he received notification from his bank that he had insufficient funds and received other notifications from financial institutions that he had zero funds in his account. Grievant subsequently found out that management had placed him into an AWOL status and had not been receiving pay for some time. This made no sense since he (Grievant) had an abundance of accumulated sick leave. Grievant testified he then received an absence inquiry from Manager Customer Services, Yvonne Lopez advising him that he had to contact his supervisor within 48 hours and that he could be subject to disciplinary action up to and including removal. This confused the Grievant as he had kept his station manager and supervisor apprised of his situation and had provided them with the medical documentation.

Grievant testified he submitted a request for light duty and that by letter dated October 1, 2019, he was notified that his request for light duty had been denied based on his current restrictions. Grievant indicated that no one from management informed him specifically the reasons for the denial or what part of his restrictions were too strict. Grievant explained that if he knew which restrictions caused the denial, he could have returned to his physician and received new restrictions. Grievant further testified that he was never provide an opportunity to express what

³ Joint Exhibit 2 page 12.

kind of work he could perform. Grievant stated he was willing to sweep floors, cut paper dolls or anything just to get back to work.

On October 24, 2019, the Grievant returned to his treating physician and secured additional medical documentation indicating a 40-pound restriction. The Grievant submitted a second request for light duty. On October 25, 2019, the Grievant presented Station Manager Brown a copy of his new restrictions. According to the Grievant, Station Manager Brown informed him that he could return to work. On October 28, 2019, Grievant reported for work at the North Broadway station, clocked in and cased his route for an hour. Grievant was then approached by Manager Seale who advised him that he needed to clock out and go home that his restrictions were too great. Grievant showed Manager Seale his hamper and informed Manager Seale that there was nothing in his hamper that weighed over 40 pounds and that he had broken down his two trays of mail into five trays of mail but to no avail. Grievant left work and returned home.

Grievant testified that after he returned home, he sent letters to his congressman and senator, which was followed up by phone calls from their offices. Grievant stated that he was finally permitted to return to work on or about November 10, 2019, with the same 40-pound restriction. Grievant wondered why he was never contacted by the USPS occupational nurse as to what duties he could perform. Grievant testified that he is currently working under the 40-pound restriction.

Stephen Seale testified that he is been employed by the Postal Service for 11 years, is currently the Manager Customer Service of the North Broadway station and was the USPS Formal A designee in this grievance. Mr. Seale described the normal process utilized when an employee's request for light duty, which is to forward the request along with medical documentation to the postmaster's office for consideration, who then notifies the various unions representing the employee.

Mr. Seale indicated that he inherited this grievance from the prior manager Chris Brown. Mr. Seale testified that he recalled the Grievant having a 5-pound weight restriction and not being to reach above his shoulders. Mr. Seale stated that the 5-pound restriction limits what a letter carrier can do and this would also inhibit the letter carrier's ability to drive a vehicle.

Mr. Seale indicated that during the Formal A meeting that he and the NALC representative agreed to a partial settlement which would convert the AWOL, LWOP or annual leave charged to the Grievant to sick leave. Mr. Seale testified that after the Grievant brought in medical documentation that raised his lifting restriction to 40-pound Grievant's request for light duty was again denied because of the weight restriction and that he was not released to full duty. Mr. Seale testified that at some point later, after talking to someone in the nurse's office, he decided that the Grievant could return to full duty.

Under cross-examination, Mr. Seale was asked what the dimensions of a "spur" was, Mr. Seale replied that they are about the size of a shoebox under 10 ounces. Mr. Seale acknowledged that no one from the postmaster's office contacted him regarding the Grievant's light duty request.

The final witness was Yvonne Lopez. Ms. Lopez testified that she has been employed by the Postal Service for over 34 years and is currently the Manager Customer Services of Heritage station. Ms. Lopez indicated that she had been designated as the postmaster's designee and acknowledged that she signed the letter mailed to the Grievant dated October 1, 2019. Ms. Lopez testified that she denied the Grievant's request for light duty because of his restrictions.

Under cross-examination, Ms. Lopez indicated that the Grievant's restrictions prohibited him from lifting over 5 pounds, reaching or lifting of the right arm an extension of the shoulder of the above (Grievant's) pain threshold, but admitted that she did not ask the Grievant what his pain threshold was. Ms. Lopez stated that this was the responsibility of Grievant's supervisor or manager. Ms. Lopez indicated that the Postmaster was not available, so she had been appointed the postmaster's designee and insisted that a designee appointment letter is not required and the mere fact that she signed the denial letter constituted appointment as postmaster's designee. Ms. Lopez acknowledged that she did not meet with the NALC president or his designee to discuss the Grievant's request for light duty and insisted that it is not a requirement to do so. According to Ms. Lopez, Bonnie (assumption postmaster's secretary) was very well aware of the light duty process and provided her with everything she needed to have to make a determination.

Ms. Lopez testified that from her recollection the Grievant did not submit a request for light duty in September 2019. Yet shortly thereafter, acknowledged that her letter dated October 1, 2019, referenced the Grievant's current restrictions of his September 2019, request for light duty. Ms.

Lopez denied conducting any work searches for the Grievant, because according to her it was not her responsibility.

The Union has argued that in a contract case such as this, the burden of proof can shift from the Union to the Employer, if the Union has proved a prima facie case of a contract violation. In case J11N-4J-C 17328817, Arbitrator Michael Jordan sustained the Union's grievance and explained why he believed the burden of proof in contract cases can shift to the Employer. Arbitrator Jordan stated:

"The burden on the Union in this contract case is to establish its claim by a preponderance of the evidence, but as the Union argues and Arbitrators Barry Simon and Lawrence Roberts declared in their cited award, there is a shifting burden of proof in cases of this nature. Once the Union established that the grievant properly submitted her request for light duty with a supporting doctor's statement listing her limitations, the burden then shifts to to the management team to show it gave her the greatest consideration and made a bona fide effort to identify light duty work for.

Management would have had to either assign her light duty work or clearly demonstrate why there was no such work available with good reasons such as the 1.5% amount agreed to between the Union and management had already been met or someone or more of her defined medical limitations precluded her assignment to any job, or that no work was available not only in her installation on her shift, but in any installation on any shift in the administrative jurisdiction – here - the Chicago area. While the Union met its initial burden, management did not meet its burden.

In case G11N-4G-C 16195543/16439260, Arbitrator Ruben Armendariz sustained the Union's grievance. In the Discussion and Opinion section of the award, Arbitrator Armendariz states:

"In contract issue cases, the burden of proof rest with the Union. In this case, the burden of proof shifted to management to provide the written account of why they were not able to provide the grievant 8-hours of light duty work on a daily basis. Union argued that without a written accounting, management violated Article 13.2.C. Additionally, Article 13.2.B.1, states,

"Any ill or injured full-time or part- time flexible employee having a minimum of five years Postal Service, or any full-time regular or part-time flexible employee who sustained injury on duty, regardless of years of service, while performing the assigned duties can submit a voluntary request for permanent reassignment to light duty or other assignments to the installation head if the employee is permanently unable to perform all or part of the assigned duties..."

Here, grievant requested a permanent reassignment to light duty. Grievant's doctor did not place any restrictions on grievant's driving. Management assumed she could not drive but no restrictions were indicated for driving. Service argued they do not have to provide light duty. It is true Article 13 grants no guarantee for an 8-hour day but it places a significant obligation on management to aid and assist employees who are temporarily unable to perform their regular duties. Article 13.2.C requires the Service to provide the "greatest consideration" and "careful consideration." The arbitrator finds this obligation has greater weight than for the Service to bluntly state, "we have no obligation" to provide light duty work. This is counter to their obligations to provide the greatest consideration. Service

