



STEP B DECISION

Step B Team:	Decision:	RESOLVE
USPS:	USPS Number:	G11N-4G-C 1754 7436
Alex Zamora	Grievant:	Melissa Ortega
NALC:	Branch Grievance Number:	421-670-17
Karrie Kimbrell	Branch:	421
District:	Installation:	San Antonio
Rio Grande	Delivery Unit:	Hackberry
	State:	Texas
	Incident Date:	06/15/2017 & cont.
	Informal Step A Initiated:	07/07/2017
	Formal Step A Meeting:	No meeting held
USPS Formal A:	Date Received at Step B:	07/26/2017
Stephanie Olivares	Step B Decision Date:	08/04/2017
NALC Formal A:	Issue Code:	13.1200
Richard Gould	NALC Subject Code:	507501



ISSUE:

Did management violate Articles 13, 15, 19 (ELM, Section 355) and 30 (LMOU, Article 13 Sections 2 and 3) of the National Agreement by failing to provide the grievant with light duty work and by failing to consult with the branch president concerning the light duty request? If so, what is the appropriate remedy?

DECISION:

The Dispute Resolution Team (DRT) mutually agreed to **RESOLVE** this grievance. The case file evidenced a violation of the National Agreement in this case. The grievant will be made whole for the period inclusive of the medical provided, June 7-16, 2017. Any sick or annual leave used by the grievant during that period of time will be changed to Administrative Leave (code 86) for the full 8 hours the grievant was released to work. Paperwork necessary for the pay adjustments will be properly completed by management within 14 days of receipt of this decision. Copies of the paperwork will be provided to the union and the grievant immediately upon submission to Eagan Accounting Services. The branch president/designee will be consulted by the installation head/designee about the accommodation of temporary or permanent light duty assignments for the letter carrier craft as required under the LMOU. See DRT Explanation.

EXPLANATION:

The grievant was injured purportedly during the performance of her work duties on March 23, 2017. After submitting what appears to be incorrect information to the Department of Labor, the grievant's claim was denied; it is currently on appeal. Pending the outcome of that appeal, the grievant was informed by Health Resource Management (HRM) on May 31, 2017, that she would need to request light duty in accordance with Article 13 of the collective bargaining agreement. The grievant did submit a request to the installation head on June 7, 2016, as required.

The union contends the grievant submitted a light duty request along with the Texas Med Clinic Work Status Report dated June 2, 2017, to the installation head, Postmaster Carr.

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The postmaster waited until June 15, eight days later, to render a decision that he was denying the light duty request without any explanation as to why it was being denied. Branch President Tony Boyd attests that neither the installation head nor his designee has contacted him for consultation regarding the grievant's light duty accommodations.

The union filed a timely appeal by certified mail to the Formal Step A representative on July 14, 2017, to include the PS Form 8190 and all information discussed at the Informal Step A meeting. That mail piece was addressed to the Formal Step A representative, Stephanie Olivares and was tracked by the postal service as being "delivered, to agent" on July 18, 2017. After receiving no contact by Ms. Olivares, the union had no other choice but to appeal the grievance to Step B in accordance with Article 15.3.C.

Article 30 addresses the local parties' right to negotiate specific provisions of the National Agreement. Assignment of light duty is one of the work rules open for local negotiations. Section one of the LMOU for Branch 421 outlines the installation head's requirement to consult with the branch president regarding accommodations for temporary or light duty assignments. This first step outlined in the LMOU never happened. Neither the installation head nor his designee consulted with the branch president.

Management further violated the contract by failing to provide the grievant with light duty work. The language in this LMOU has been in force since 1991 and has never been challenged by the USPS. It also requires the postal service to make every effort to reassign the concerned employee. Management from the lowest level up to the installation head made zero effort to provide Mrs. Ortega with any work. It should be noted that Mrs. Ortega was carrying her full assignment up until her OWCP case was denied. Mrs. Ortega could have easily continued carrying her assignment without issue. Yet management instead chose to deny her that work altogether and refuse to look for work in accordance with Article 13 of the LMOU.

It should be noted that work was never approved at any level according to the interviews. Everyone, to include the Installation head, claimed that the light duty request was denied by someone else. The individuals interviewed also made zero attempt to find Mrs. Ortega any work in her present craft, in other crafts, or at another station.

In his denial letter, Robert Carr also failed to explain in writing why light duty work is unavailable. He clearly denied the request, but it is unclear why he denied the request and without making any effort to find a temporary assignment. This is a clear violation of Article 13.2.C.

The union requests as remedy that management cease and desist violating Branch 421 LMOU, Article 13, Section 1 regarding the requirement to consult with the branch president regarding light duty assignment of ill or injured employees. The union also requests management cease and desist violating the requirements outlined in Article 13 of the National Agreement and Branch 421 LMOU, Article 13, Section 2-3 regarding the requirement to make every effort to reassign work to concerned employees who have submitted a valid request for light duty and to make the grievant whole for the hours she should have worked from June 2, 2017, to present to include all benefits she would have received had she been working. The union requests that management be instructed to provide Mrs. Ortega with light duty work within her medical restrictions, or otherwise make whole.

Management did not meet at the Formal Step A level and did not provide any contentions.

The DRT determined that there was a violation when the grievant was not provided light duty work. The file evidenced a request was submitted by the grievant on June 7, 2017, in writing, covering the period of June 2-16, 2017. This request was addressed by the installation head on June 15, 2017, stating the request was denied. The denial letter did not contain a reason for the denial. The file did not evidence any effort was made to identify light duty work to include consulting with the branch president or his designee about potential accommodations. The file did evidence the work existed prior to the denial of the request as the grievant had been working on her assignment through June 3, 2017.

The following language from the JCAM and the LMOU addressed light duty requests and how they should be handled.

Article 13.2.A

13.2.A 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 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.

The following requirements apply to an employee seeking temporary reassignment to light duty work:

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

Article 13.2.C

13.2.C Installation heads shall show the greatest consideration for fulltime 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.

Article 13.2.C requires that installation heads 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.

Section 3. Local Implementation

Due to varied size installations and conditions within installations, the following important items having a direct bearing on these reassignment procedures (establishment of light duty assignments) should be determined by local negotiations.

13.3.A *Through local negotiations, each office will establish the assignments that are to be considered light duty within each craft represented in the office. These negotiations should explore ways and means to make adjustments in normal assignments, to convert them to light duty assignments without seriously affecting the production of the assignment.*

13.3.B *Light duty assignments may be established from part-time hours, to consist of 8 hours or less in a service day and 40 hours or less in a service week. The establishment of such assignment does not guarantee any hours to a part-time flexible employee.*

13.3.C *Number of Light Duty Assignments. The number of assignments within each craft that may be reserved for temporary or permanent light duty assignments, consistent with good business practices, shall be determined by past experience as to the number of reassignments that can be expected during each year, and the method used in reserving these assignments to insure that no assigned full-time regular employee will be adversely affected, will be defined through local negotiations. The light duty employee's tour hours, work location and basic work week shall be those of the light duty assignment and the needs of the service, whether or not the same as for the employee's previous duty assignment.*

Local Implementation. *Article 13.3, together with Article 30.B.15, 16 and 17 provide that the parties may discuss the following during the local implementation period:*

- *The number of light duty assignments within each craft or occupational group to be reserved for temporary or permanent light duty assignment (Article 30.B.1).*
- *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 (Article 30.B.16).*
- *The identification of assignments that are to be considered light duty within each craft represented in the office (Article 30.B.17).*

Article 13.3 provides that changes may be made in an employee's regular schedule and work location in order to accommodate a light duty request (Step 4, NC-S 5127, April 15, 1977, M-00734). National Arbitrator Mittenthal held in H1C-4E-C 35028, June 12, 1987 (C-00935) that full-time employees on light duty are not guaranteed eight hours a day or forty hours a week of light duty work. They may be sent home before the end of their tour due to lack of work.

Article 13.4.A

13.4.A 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.

When possible, letter carriers should be provided light duty work within the letter carrier craft. Article 13.4.A obligates management to reduce casual hours, if necessary, in order to provide light duty work in the letter carrier craft for career letter carriers.

Branch 421 LMOU, Article 13

SECTION 1

In accommodation of temporary or permanent light duty assignments for the Letter Carrier Craft, the Installation Head/Designee shall consult with the 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 work force. After all efforts are exhausted in this area, the Installation Head/Designee has the authority to assign light duty within other crafts, in accordance with Article 13, of the National Agreement. (1991)

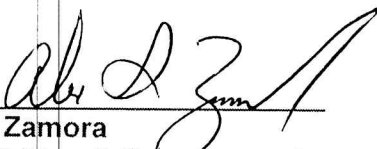
SECTION 3


The following constitute duties that a letter carrier may perform in a light duty status, but are not limited to: (1991)

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

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

The grievant may resubmit a request for light duty with the required supporting medical statement from a licensed physician or by a written statement from a licensed chiropractor for light duty consideration. Based on the review of the case file, the DRT agreed to the remedy above.


Alex Zamora
USPS Step B Representative


Karrie Kimbrell
NALC Step B Representative

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Grievance File Contents:

PS Form 8190	Interview Q & A (7 pgs)
Union Contentions (5 pgs)	Moratorium Request
CA-1 (2 pgs)	Employee Everything Reports
DOL correspondence (5 pgs)	Route/Carrier Performance Reports
HRM correspondence	Workhour Workload Reports
Light Duty Request	PS Forms 3999X
Texas Med Clinic Work Status Report	ELM Excerpts
Light Duty Request Denial	LMOU Excerpts
Supplemental Light Duty Request	JCAM Excerpts
Formal Step A Tracking Info (4 pgs)	Step B Decisions
Email from Grievant	Information Requests
Branch President Statement	Formal Step A Request
Grievant Statement	

cc: District Manager, Rio Grande District
NALC NBA, Region 10
Manager, Human Resources, Rio Grande District
Manager, Labor Relations, Rio Grande District
Postmaster
NALC Branch President
USPS Formal A Representative
NALC Formal A Representative
DRT File