



**STEP B DECISION**

|                        |                            |                               |
|------------------------|----------------------------|-------------------------------|
| <b>Step B Team:</b>    | Decision:                  | <b>RESOLVE</b>                |
| USPS:                  | USPS Number:               | <b>G11N-4G-C 1757 7833</b>    |
| <b>Alex Zamora</b>     | Grievant:                  | <b>Armando Trevino</b>        |
| NALC:                  | Branch Grievance Number:   | <b>421-733-17</b>             |
| <b>Karrie Kimbrell</b> | Branch:                    | <b>421</b>                    |
| District:              | Installation:              | <b>San Antonio</b>            |
| <b>Rio Grande</b>      | Delivery Unit:             | <b>Valley Hi</b>              |
|                        | State:                     | <b>Texas</b>                  |
|                        | Incident Date:             | <b>07/11/2017 &amp; Cont.</b> |
|                        | Informal Step A Initiated: | <b>07/26/2017</b>             |
|                        | Formal Step A Meeting:     | <b>08/21/2017</b>             |
| USPS Formal A:         | Date Received at Step B:   | <b>08/28/2017</b>             |
| <b>Eva Ulanoff</b>     | Step B Decision Date:      | <b>09/11/2017</b>             |
| NALC Formal A:         | Issue Code:                | <b>13.1200</b>                |
| <b>Richard Gould</b>   | NALC Subject Code:         | <b>507501</b>                 |

**ISSUE:**

Did management violate Articles 3, 5, 13, 19 (ELM, Section 355) and/or 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 request made and medical provided, July 11 through September 1, 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 its 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 sustained an off-the-job injury to his wrist on June 25, 2017. He was placed off work until July 3, 2017. At that point, he was released to work with the limitation of not being able to lift more than 5 lbs. with his left hand. A light duty request was submitted. No response was given by the installation head. Another request was submitted; it was responded with a denial from the installation head. On 08/09/2017, the grievant's restrictions were changed to a 45 lbs. lifting restriction, still for the left hand only. Another request was submitted. The file did not contain evidence that it was answered.

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The union contends the grievant submitted a light duty request to the installation head, Postmaster Carr. The postmaster did not respond to the initial request. A subsequent request was answered with a denial that gave no explanation for the denial. The grievant is still being denied light duty work. He is capable of doing a multitude of things to include casing mail, delivering curbside, working on edit books, reviewing UBBM, etc. Management made no attempt to give him any of that work.

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.

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 Mr. Trevino with any work. The union interviewed the station manager who stated the postmaster had not contacted her regarding the request nor had management made any effort to find Mr. Trevino any work.

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 attempted to interview Postmaster Carr. He refused to be interviewed.

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 he should have worked from July 11, 2017, to present to include all benefits she would have received had he been working. The union requests that management be instructed to provide Mr. Trevino with light duty work within his medical restrictions, or otherwise make whole.

**Management** contends the station manager does not have the authority to make appointments for interviews with the postmaster. Management had no knowledge the postmaster refused to be interviewed. There are no provisions in the contract that light duty is an obligation by management. Management's effort in looking for light duty does not equal for management to be mandated (obligated) to provide a light duty request. Light duty is considered permissive and had been addressed and processed in this manner for the past 20 years in San Antonio.

Light duty increases additional risk factors for additional injury to the potential employee that is asking for light duty. There is no make-work in providing light duty or providing make-work within the other crafts at the unit. Management or the installation head will not offer to pay Mr. Trevino administrative leave due to the fact that this issue has not been done with all of the light duty requests in the past. This is a practice that has never been addressed with the

union. The union has failed to acknowledge the contentions addressed in this grievance as this has been a past practice of not following the contract by both parties.

The DRT determined that there was a violation when the grievant was not provided light duty work. The denial letter written by the installation head 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.

Management's contention that "not following the contract" with the subject of light duty was a past practice and that the union had not previously addressed this issue. The many Step B decisions from this installation about light duty denials that were contained in the file directly disputed this claim. While it is true that management is not "mandated" to "always" provide light duty, the contract does require that management "make a bona fide effort" to identify light duty work. In this case, zero effort was made.

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 Mittenenthal 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.

The union contended the postmaster refused to be interviewed for this grievance. The file shows the postmaster eventually agreed to be interviewed but only if the questions were provided in writing to him for response. Applicable contract language from Article 17 from the JCAM is shown below, in relevant part.

**Page 17-4, 5, 6:**

**Steward Rights—Activities Included.** A steward may conduct a broad range of activities related to the investigation and adjustment of grievances and of problems that may become grievances. These activities include the right to review relevant documents, files and records, as well as interviewing a potential grievant, supervisors and witnesses.



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*Specific settlements and arbitration decisions have established that a steward has the right to do (among other things) the following:*

*Interview witnesses, including postal patrons who are off postal premises (National Arbitrator Aaron, N8-NA-0219, November 10, 1980, C-03219; Step 4, H1N-3U-C 13115, March 4, 1983, M-01001; Step 4, H8N-4J-C 22660, May 15, 1981, M-00164);*

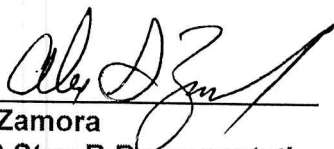
*• Interview supervisors (Step 4, H7N-3Q-C 31599, May 20, 1991, M-00988);*

**Right to Information.** *The NALC's rights to information relevant to collective bargaining and to contract administration are set forth in Article 31. This section states stewards' specific rights to review and obtain documents, files and other records, in addition to the right to interview a grievant, supervisors and witnesses.*

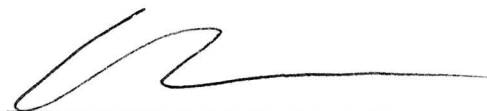
M-00988, Step 4

*After reviewing this matter, we mutually agreed that no national interpretive issue is fairly presented in this case. The subject matter of interviews with supervisors has been previously settled in Case NC-S-8463 ("It is anticipated that supervisors will respond to reasonable and germane questions during the investigation of a grievance.") There is no negotiated requirement that questions be submitted in writing in advance, by either party.*

Based on the review of the case file, the DRT agreed to the make whole remedy shown on page one.



**Alex Zamora**  
USPS Step B Representative



**Karrie Kimbrell**  
NALC Step B Representative

**Grievance File Contents:**

PS Form 8190  
Management Contentions (2 pgs)  
Union Contentions (7 pgs)  
Medical Documentation (5 pgs)  
Certified Mail Receipt (2 pgs)  
Copies of Emails (13 pgs)  
Copies of Pay Stubs (3 pgs)  
Interview Q & A (4 pgs)  
Branch President Statement

Employee Everything Reports (5 pgs)  
LMOU Excerpts (24 pgs)  
Step B Decisions (16 pgs)  
Information Request  
Formal Step A Request  
District Instructions (2 pgs)  
Light Duty Requests (3 pgs)  
Light Duty Request Denial

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