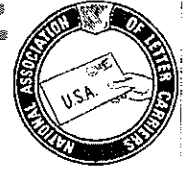




RESOLVE



STEP B DECISION

Step B Team:	Decision:	RESOLVE
USPS:	USPS Number:	G16N-4G-C 2108 8384
Laurie Nichols-Marshall	Grievant:	George Zapata
NALC:	Branch Grievance Number:	421-1103-21
Jose Portales	Branch:	421
	Installation:	San Antonio
District:	Delivery Unit:	Serna
Rio Grande	State:	Texas
	Incident Date:	01/06/2021
	Informal Step A Meeting:	01/23/2021
	Formal Step A Meeting:	01/28/2021
	Received at Step B:	02/01/2021
	Step B Decision Date:	02/08/2021
	Issue Code:	13.1200
	NALC Subject Code:	507501

 **COPY**

ISSUE: Did management violate Articles 13 and the Local Memorandum of Understanding (LMOU) when they failed to consult with the branch president and failing to provide the grievant with light duty? 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 Articles 13 and 30 (via the LMOU) of the National Agreement. The grievant will be made whole for any loss wages or benefits from 12/11/2020 through 12/30/2020. Any annual leave or LWOP used by the grievant during this time frame will be converted to "Other Paid Leave" (code 86). Management will provide PS Form 8038 to the grievant within three days of receipt of this decision. Upon return of the PS Form 8038 management will process the PS Form 8039 in accordance with the instructions in Management Instruction EL-430-2017-6 and submit the paperwork to Eagan Accounting Services as soon as possible, but no later than fourteen (14) days following receipt of the PS Form 8038. See the DRT Explanation below.

EXPLANATION: The grievant in this case is George Zapata, a full-time regular assigned to Serna Station in San Antonio, TX with a seniority date of 03/03/2018. The grievant had surgery on 11/19/2020. On 12/09/20 the grievant's doctor provided him with a note stating he would be able to return to work on 12/11/2020 with restrictions of no lifting over 15 pounds, no stooping and no prolonged standing. The grievant submitted a request, along with his restrictions, for light duty to the installation head on 12/11/2020.

The union filed this grievance to protest management's failure to provide the grievant with a temporary light duty assignment. Unable to resolve the dispute through the Informal and Formal A steps of the grievance procedure, the union appealed to Step B.

The union contends on 12/10/2020 the grievant sent a text message to his supervisor of his restrictions listed. The supervisor replied, "If you can't do your job you can't come back to work if that's what you're telling me." On 12/11/2020 the grievant sent a certified letter to the installation head requesting for a light duty assignment and the grievant never received a

response. The union contends the only information that management provided was the Employee Everything Report (clock-rings), doctor's notes and copies of the light duty request. The Informal Step A supervisor stated at the Informal Step A meeting that he was trying to get a copy of the certified letter that the installation head allegedly sent to the grievant. However, none were ever provided to the steward. Management failed to provide the grievant an explanation in writing why there was no light duty assignment available for him. The union further contends the installation head/designee did not consult with the branch president as stated in the LMOU. The grievant was forced to use annual leave and Leave Without Pay (LWOP) to cover his absences.

The union requests management cease and desist violation Article 13.2 of the National Agreement as well as the LMOU. The union also request the grievant be made whole from 12/11/2020 through 12/30/2020. The union requests all payments

Management contends the grievant did notify management on 11/16/2020 that he would be having surgery on 11/19/2020. Management contends the grievant notified his supervisor that he could return to work with restrictions beginning on 12/11/2020. The supervisor informed the grievant if he couldn't do his job then he couldn't return to work. Management contends this grievance is untimely as this is the date the grievant became aware that his request for light duty was denied. Due to the grievant's limitations he would not be able to perform the duties of a letter carrier. Management finally contends the installation head would never approve or disapprove the request for light duty without the employee first going through his chain of command.

The DRT reviewed the case file and determined management violated Articles 13 and 30 (via the San Antonio LMOU) by failing to consult the branch president to attempt to identify light duty work. The DRT agreed the National Agreement requires the installation head to be the one to make the decision concerning light duty. Although the LMOU permits a designee to consult with the branch president (or his designee) and to actually make the assignment if it is to another facility, the approval or denial itself must be made by the installation head. If the request is refused, the *installation head* must inform the grievant in writing. Article 13.2.C and the accompanying explanation appear on page 13-4 of the JCAM:

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.

The San Antonio LMOU includes the following:

**ARTICLE 13
ASSIGNMENT OF ILL OR INJURED
REGULAR WORKFORCE EMPLOYEES**

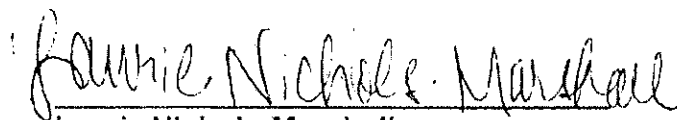
SECTION 1

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)

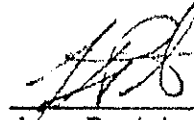
SECTION 2

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)

Bases on its review of the case file, the DRT agreed to the decision and remedy above



Laurie Nichols-Marshall
USPS Step B Representative



Jose Portales
NALC Step B Representative

cc:

LR Manager, Southern Area
NALC Region 10 NBA
Rio Grande District HR Manager
Rio Grande District LR Manager
Management Formal Ernesto Saucedo

NALC Branch President
NALC Formal Mark Isenhour
Manager, Rio Grande District
Postmaster, Kerrville, Texas
DRT File

Grievance File Contents

PS Form 8190 (2 pgs)
Management Contentions
Copies of PS Form 3811
Text Messages (2 pgs)
LMOU Excerpts (3 pgs)
Employee Everything Report (6 pgs)
Request for Information
Request to Meet at Formal Step A

Union's Contentions (6 pgs)
Request for Light Duty (2 pgs)
Doctor's Notes (4 pgs)
Grievant's Statement (2 pgs)
PS Form 3972 (2 pgs)
Previous Step B decisions (9 pgs)
Request to Meet at Informal Step A