

**REGULAR ARBITRATION PANEL
SOUTHWEST AREA**

<u>IN THE MATTER OF THE ARBITRATION¹</u>	)	GRIEVANT: Class Action
	(
between	)	POST OFFICE: Baton Rouge, LA
	(
UNITED STATES POSTAL SERVICE	)	USPS Case No: G98C-4G-C-01131175
	(	G00C-4G-C 02115426
	)	G00C-1G-C 02236344
and	(	G00C-4G-C 02115433
)	
AMERICAN POSTAL WORKERS UNION, AFL-CIO	)	APWU Case No: JBF052CC
	(	HH02065CA
	)	HH02213CA
	(	HH02066CA

BEFORE: Ruben R. Armendariz, Arbitrator

APPEARANCES:

For the U. S. Postal Service:	Larry Hamilton, Manager - Labor Relations Specialist
	Ron Dixon, Labor Relations Specialist
For the Union:	Frankie Sanders, National Business Agent

Place of Hearing:	Baton Rouge, LA
Date of Hearing:	September 18, 2003
Date Hearing Closed ² :	October 29, 2003
Date of Award:	November 22, 2003
Relevant Contract Provisions:	Article 7. 1. B
Contract Year:	2000 - 2005
Type of Grievance:	Contract/Casuals in Lieu

AWARD

The grievance is sustained in part and denied in part. The Postal Service is directed to cease and desist from hiring the same casuals in contravention of Article 7.1.B.4. The Postal Service provided a reasonable justification for its long term use of casuals' consistent with Article 7.1.B.1. No monetary award is warranted under these circumstances.


Ruben R. Armendariz, Arbitrator

¹ These proceedings were tape recorded by this Arbitrator to assist in studying the record and preparing this award. Said tapes are immediately erased upon issuance of the Award and are reused for other arbitrations.

² By agreement of the parties, these grievances were consolidated. It was agreed that post-hearing briefs were to be postmarked no later than October 20, 2003, the parties to exchange their briefs and the last brief received by this Arbitrator would close this proceeding.

ARBITRATOR'S OPINION AND AWARD

I. STATEMENT OF THE CASE

These are consolidated contract grievances and were filed after issuance of **Arbitrator Shyam Das National Award**.

The Union filed four separate grievances³ and challenged the Postal Service's hiring practices when they improperly hired casual's on Tours 1, 2 and 3 at the Baton Rouge, Louisiana General Mail Facility (GMF). The Union argued that Management continued to hire casual employees; when one group of casuals had worked two (2) ninety (90) day appointments, Management replaced them with another group of casual employees, thereby, creating a continuous revolving door of casual employees.

The Union argued that these casual employees were being utilized to replace career employees who were on **permanent limited duty** and who had been absent from work for an extended period of time. The Postal Service, on the other hand, argued that these casuals were utilized to replace career employees who were on **temporary limited duty and absent on extended sick leave**. The Union argued that this was "**make-work**" and improperly "**triggers**" to hire a casual and masks the improper hiring of casuals following the Das National Award. Moreover, the Union argued that Management did not mask the hiring of casuals with a "**trigger**"⁴ **until after** the casual had been hired.

The Union argued that casuals were being hired for situations other than what is provided for under Article 7.1.B.1.

Because the parties could not resolve these grievances within the grievance procedure, they

³ JX-2B represents case no: G00C-1G-C 02236344 (Tour 3) filed July 31, 2002, JX-2C represents case no: G00C-4G-C 02115426 (Tour 2) filed March 6, 2002, JX-2D represents case no: G00C-4G-C 02115433 (Tour 1) filed March 11, 2002.

⁴ According to the Postal Service, Management's first obligation is to identify a proper "trigger." After that trigger has been identified and approval given for the hiring of the casual, Management then hires the casual and are matched up with the "triggers" that had already been identified. Special circumstances that would identify "triggers" are: heavy workload periods, temporary or intermittent service conditions such as a work stoppage by postal competitors or equipment malfunction, coverage for temporary vacancies, including coverage for withheld positions, those where casuals backfill for career employees temporarily assigned to higher level positions, replacement for extended absences such as injury on duty, leave without pay, and long term sick leave usage, coverage during choice vacation periods, and covering

were submitted to this Arbitrator for arbitration.

II. ISSUE

The parties stipulated and framed the issues as follows:

Whether Management violated the National Agreement when they hired casual employees in the manner it did in the instant cases? If so, what is the appropriate remedy?

III. RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 7 – EMPLOYEE CLASSIFICATIONS

Section 1. Definition and Use

B. Supplemental Work Force

1. The supplemental work force shall be comprised of casual employees. Casual employees are those who may be utilized as a limited term supplemental work force, but may not be employed in lieu of full or part-time employees.

IV. STIPULATIONS

1. The parties agree that the following cases will all be combined to be heard together in arbitration, before the instant arbitrator:
 - a. G00C-4G-C 02115426
 - b. G00C-4G-C 02115433
 - c. G98C-4G-C 01131175
 - d. G00C-1G-C 02236344
2. The issue in the instant cases is: Whether Management violated the National Agreement when they hired casual employees in the manner it did in the instant cases? If so, what is the appropriate remedy?
3. The grievance is properly before the Arbitrator.
4. The work involved in these grievances is identified as Clerk work.
5. If any remedy is awarded it is limited to 14 days from the date of the instant grievance.
6. The grievances are subsequent to the Das National Arbitration decision.
7. The National Das Arbitration decision is controlling on the issue of hiring casual employees.

for career employees who are on temporary light/limited duty and are unable to perform the core duties of their assignments.

V. UNION POSITION

The Union stipulated and argued that the **Shyam Das National Award (JX-4)** is controlling in these grievances concerning the “casual in lieu of” issue. The Union argued that the Service’s argument in its use of casual employees for the alleged temporary replacement of injured employees is misplaced. Management made no distinction at Step 2 in any of these grievances as to which group of employees was being replaced. The only argument addressed by Management is that these casuals were being utilized because these employees can not perform their duties. The Union argued that if a casual is replacing a permanent limited duty employee, or their illness has reached maximum improvement, the replacement of these employees would be for other than a temporary period. Casuals may be used as a temporary limited term workforce and that the hiring of casual employees at the Baton Rouge, Louisiana GMF was other than for temporary and limited term usage. The Union argued that the evidence presented in JX-2B, JX-2C and JX-2D disclosed that casuals on Tour 1, Tour 2 and Tour 3 were not used as a supplemental workforce consistent with the Downes Memorandum, the Das National Award, or Article 7.1.B.1. Rather, these casuals were utilized on a consistent revolving door basis.

In support of their position, the Union provided the arbitral citations of National Arbitrator Howard G. Gamser in case Nos: A-NAT-3444 (Gamser I), N-N-73-1 (Gamser II), AD-NAT-0121 (Gamser III), National Arbitrator Richard Mittenthal in case Nos: H4C-NA-C 65, 95 (Mittenthal I), H7C-NA-C 36, 132, H0C-NA-C 28, (Mittenthal II), Arbitrator Nicholas H. Zumas in case No: H1C-4K-C 27344/45, Regional Arbitrator Hammah King in case No: G94C-4G-C 98121648, G98C-4G-C 99130083, Arbitrator Glenda August in case No: G90C-1H-C 96032085, Stephen A. Dorshaw in case No: G98C-1G-C 99245787, Arbitrator Debra Simmons Neveu in case No: G94C-4G-C 99100344, Arbitrator Maretta C. Toedt in case No: G94C-4G-C 96069420, Arbitrator Charles H. Frost in case No: H94C-4H-C 96094593, Arbitrator Patricia S. Plant in case No: G94C-4G-C 96093269, Arbitrator Linda S. Byars in case No: H94N-4H-C 99037461, Arbitrator Lawrence R. Loeb in case No: C98C-4C-C 99304477, Arbitrator William J. Miller in case No: C94C-1C-C 99043290, Arbitrator Stephen D. Owens in case No: D98M-D-C 01008645, Arbitrator Roger E. Maher in case No: B98N-4B-C 00210838 and Arbitrator John C. Fletcher in case No: I94C-4I-C 07027112.

The Union requests that these grievances be sustained.

VI. POSTAL SERVICE POSITION

The Postal Service argued that they are well within the scope of the casual 180 day appointment period in a calendar year. Management is utilizing casuals because career employees that are LD 68 or 69 can not perform their duties. Management states that they would not utilize casuals beyond the 180 day appointment term within a calendar year. Management argued that pursuant to a settlement award, a casual hiring approval form was implemented and Management has complied with the settlement in its entirety.

Moreover, in case G00C-1G-C 02236344, the Postal Service argued at Step 2 that, “the Union was provided with 15 casual hiring approval forms which clearly indicate 15 full time regular employees on extended absence for which these casuals were hired to replace on a temporary basis. Hiring additional career employees at a time when we know these temporarily absent employees will return and when we know we will be excessing career employees due to various impacts on the work force would be irresponsible.” The Postal Service also argued that the employment of casuals did not exceed the negotiated percentage allowable under the contract.

The Postal Service further argued that there are numerous possible supplemental justifications for utilization of casuals that do not constitute a violation and are:

- Incidental and vacation annual leave
- Sick Leave and Sick Leave for Dependent Care (SLDC)
- Family and Medical Leave Act (FMLA) absences
- Absences Without Official Leave (AWOL)
- Absences due to disciplinary suspensions and pending removals
- Absences due to retirements, resignations and transfers-until management can hire other career employees
- Absences due to training
- Absences due to details on voluntary temporary details
- Absences due to union steward duty time, union officer leave and union convention leave
- Absences due to temporary light and limited duty
- Overtime coverage, holiday coverage and heavy mail volume periods

The Postal Service further argued that the Union failed to identify what regulars were not used; which PTF's were not used when casuals were utilized and what specific dates, times and

work locations involved.

In support of its position, the Postal Service provided the arbitral citations of Arbitrator Mark Lurie in case No: H98C-1H-C 00234451 and Arbitrator Phillip W. Parkinson in case No: D98M-1D-C 01090873.

The Postal Service requests that these grievances be denied in their entirety.

VII. DISCUSSION AND OPINION

Both parties to this proceeding were afforded a full opportunity to be heard, to examine and cross-examine witnesses and to introduce evidence bearing on the issues. Based on the entire record in this case, my observation of the witnesses, after examination of all the exhibits, arbitral citations provided and consideration of the parties opening arguments and post-hearing briefs, this Arbitrator makes the following findings and renders the following Discussion and Opinion:

In contract issues cases, the burden of proof rests with the Union.

The contract language of Article 7.1.B.1 of the National Agreement and its' interpretation and application has always been considered a highly contentious issue between the parties. It has recently been addressed in a National Level Arbitration on August 29, 2001, by Arbitrator Shyam Das in case no: Q98C-4Q-C 00100499, and will be discussed as a precedent setting decision in these grievances.

In his decision, Arbitrator Das *overruled* the decision of Arbitrator Zumas, in which, he stated that the issue of hiring casuals had not been submitted to Arbitrator Zumas to address. Arbitrator Zumas Award regarding the hiring of casuals had not been necessary to the issue before him, in that, it was dictum and contrary to existing National Arbitration precedent. Arbitrator Das concluded that Arbitrator Gamser had been correct; Article 7.1.B.1 did add a further constraint; that the hiring of casual employees had to be as a *limited term, supplemental work force*, and not in place of career employees. Arbitrator Das reasoned that; "Article 7.1.B.1 is a limitation on the employment or hiring of casuals, not on any particular assignment." "A claim that casuals have been employed in lieu of career employees is a matter to be determined by conditions existing at a particular time at a particular postal facility." "The relevant question is whether the casual employees were employed or hired for the purpose of being utilized as a limited term supplemental work force or instead of, in place of, or in substitution of career employees."

Arbitrator Das additionally stated in his opinion the following:

“It would not be consistent with the language in Article 7.1.B.1 for the Postal Service to staff an entire facility with a succession of casual employees on an immediate basis...” “...A claim that casuals have been employed in lieu of career employees is a matter to be determined by conditions existing at a particular time at a particular postal facility. To paraphrase Arbitrator Gamser, the question is whether the casual employees were employed or hired for the purpose of being utilized as a limited term supplemental work force or instead of, in place of, or in substitution of career employees.” “The Postal Service claims that there are myriad circumstances in which, as a practical matter, it needs to employ casual employees, and that this need could be for lengthy periods of time. The present decision obviously is not the place to address any particular set of circumstances. If, however, the Postal Service has a genuine need at a particular time at a particular location for a limited term supplemental work force rather than career employees, then there is no violation of Article 7.1.B.1. The formulation of this provision in the jointly endorsed Downes Memorandum specifically encompasses, without limitation, other circumstances where supplemental work force needs occur. And, as the Postal Service observes, the Union has the burden of proving a violation of Article 7.1.B.1.”

Arbitrator Das further stated that his decision should be given retroactive effect as follows: “...I am not persuaded that it would be appropriate to designate the interpretation of Article 7.1.B.1. in this decision as prospective only. This decision serves to clarify, on a National Arbitration basis, the proper interpretation of Article 7.1.B.1. It does not create new law or depart from the old law. To the extent the Postal Service has chosen to rely on its interpretation of Zumas, it has done so knowing full well that might not be successful.”

In these grievances, the Union argued that the Postal Service violated Article 7.1.B.1. In JX-2B (Tour 3), the record evidence disclosed that on or about June 13, 2002, local management hired 15 casuals. The Postal Service argued they were hired as a supplemental workforce. Three (3) casuals of the fifteen (15) hired are; Edward Griffin, Tomas King and Martisia Sims. The Postal Service argued that they were matched up with Sandy Benton, Anthony Riley and Janelle Porter, respectively and who are on temporary limited duty and light duty.

The Postal Service argued that Management followed the “Casual Hiring Approval Form

Guidelines⁵ that became effective on January 1, 2002, and casuals were matched up with employees on military leave, extended sick leave, light duty, and temporary limited duty (68) and not permanent limited duty employees. Management hired these casuals until those employees return to full duty. The Union argued that Management should hire career employees to replace regular employees who are out on military leave, extended sick leave, light duty and temporary and permanent limited duty.

The following is a breakdown of casuals hired on June 29, 2002, and who they replaced as gathered from JX-2B, - (Casual Hiring Approval Form).

<u>Casual employee (T-3)</u>	<u>Replaced Career employee</u>	<u>Date Approved</u>	<u>Reason</u>
Martisia Sims	Janelle Porter (mail processor)	08/03/02	68
Getta Louis	Perkins Carroll (distr clerk)	08/03/02	extended S/L
Randy Jordan	Sayonara Langford (distr clerk)	08/03/02	extended S/L
Tracy Haynes	Harold Hebert (mail processor)	08/03/02	military leave
Edward Griffin	Sandy Benton (mail processor)	08/03/02	light duty
Kishia Grayson	Carolyn Wilson (mail processor)	08/03/02	extended S/L
Simone Boudreaux	Dayrel McFarland (mail processor)	08/03/02	extended S/L
Tomas King	Anthony Riley (mail processor)	08/03/02	68
	Billy LeDoux (distr clerk)	08/03/02	68
	Patricia Ward	08/03/02	68
<u>Casual employee (T-2)</u>	<u>Replaced Career employee</u>	<u>Date</u>	<u>Reason</u>
<i>Olaiya Pugh</i>	Simi Jaisinghani	02/22/02	68
<i>Debra Dixon</i>	W. Ledoux	02/22/02	68

⁵ This form was initiated and signed on August 3, 2002, after these casuals had been hired and “triggerred.” Management had obtained approval to hire casuals by memorandum dated June 6, 2002. There was no casual approval form for Pugh and Dixon but they had been “triggerred.”

<u>Casual employee (T-1)</u>	<u>Replaced Career employee</u>	<u>Date</u>	<u>Reason</u>
Alicia Garth	Rosalyn Augustus	02/22/02	68
Katina Johnson	Betty Banks	02/22/02	68
Carlton Williams	Glynn Davis	02/22/02	68

The record evidence also disclosed in JX-2C when the following casuals commenced their employment. As of August 3, 2002, the below named casuals were still employed.

Olaiya Pugh replaced career employee Simi Jaisinghani. She was reappointed 04/02/01, terminated 06/09/01, appointed 06/16/01, reappointed 09/14/01, reappointed 12/13/01, reappointed 01/04/02 to 03/31/02 and reappointed 12/29/02.

Debra Dixon replaced career employee W. Ledoux. She was terminated 01/01/99, appointed 11/27/00, terminated 12/29/01, appointed 07/02/01, reappointed 09/30//01, reappointment 01/01/02 to end 03/31/02 and reappointed 12/29/02.

The record evidence also disclosed in JX-2D when the following casuals commenced and ended their employment.

Swanda Y. Salvage replaced career employee Carolyn Wilson. She was hired 07/16/01, reappointed on 10/14/01 and 01/01/02 to end 03/31/02. (8 ½ months employed)

Jacqueline Williams replaced career employee Janelle Porter. She was hired 06/30/01, reappointed 09/28/01, reappointed 12/27/02, 01/01/02 to end 03/31/02. (9 months employed)

Mary R. Benjamin replaced career employee Sayonara Langford. She was hired 07/02/01, reappointed 09/30/01, reappointed 01/01/02 to end 03/31/02. (9 months employed)

Ursula Turner replaced career employee Melinda Garriet. She was hired 12/03/00, appointed 01/01/01, reappointed 04/01/01, terminated 06/29/01, appointed 07/16/01, reappointed 10/14/01, reappointed on 01/01/02 to end 03/31/02. (16 months employed)

Yvette Parker replaced career employee J. Broussard. She was terminated 06/28/00, appointed 12/18/01, appointed 01/01/01, reappointed 04/01/01, terminated 06/29/01, appointed 07/16/01, reappointed 10/14/01, reappointed 01/01/02 to end 03/31/02. (21 months employed)

Stephanie Jones replaced career employee F. Jones. She was appointed 11/27/00, reappointed

01/01/01, reappointed 04/01/01, terminated 06/29/01, appointed 07/16/01, reappointed 10/14/01, reappointed 01/01/02 to end 03/31/02. (16 months employed)

The case file does not disclose if the above casual employees had worked from April 1, 2002, thru August 3, 2002, but there is an indication in the Union's grievance that their terms ended in or around June 29, 2002.

This Arbitrator finds that casual employees Pugh, Dixon, Salvage, Williams, Benjamin, Turner, Parker and Jones were employed beyond the two (2) ninety (90) day period in a calendar year in contravention of Article 7.1.B.4.⁶ Casuals Pugh and Dixon are still employed as of August 3, 2002. The appointments of casuals Salvage, Williams, Benjamin, Turner, Parker and Jones ended in or around June 29, 2002, after they had been employed from 8 ½ months to 21 months. The record evidence also disclosed that these Casuals were specifically "triggered" to certain career employees who were either off their bid assignment on extended sick leave or off of their temporary limited duty assignment for the same reasons. Career employees Melinda Garriet, J. Broussard and F. Jones were not replaced with a new casual as of August 3, 2002, for reasons unknown to this Arbitrator. But, career employees Wilson, Porter and Langford were replaced with new casuals Kishia Grayson, Martisia Sims and Randy Jordan, respectively. Career employees Simi Jaisinghani and W. Ledoux who are off of their temporary limited duty assignments continue to be replaced by casuals Pugh and Dixon.

This Arbitrator finds that the issue in these grievances is whether these casual employees who were employed "long term" were employed or hired for the purpose of being utilized as a limited term supplemental work force or instead of, in place of, or in substitution of career employees. If, it is shown that these casuals were hired other than for limited term supplemental work, then the burden would shift to the Postal Service to demonstrate that these casuals were hired for Article 7.1.B.1 purposes. The evidence in these grievances establish several casuals who were hired for an extended long period to replace career employees who are either off of their bid assignments on extended sick leave or off of their temporary limited duty or light duty assignments for the same reasons. Several arbitration citations have been provided by the Union to establish that the continuous and protracted employment of casual employees on a "revolving" door basis

⁶ The Postal Service would be well advised to monitor this situation and act accordingly.

demonstrates a “prima facie” showing that they are not a limited term “supplemental” work force. This Arbitrator finds that in these grievances, the Postal Service justifies their hiring of casuals to replace career employees who are off of their bid assignments or off their temporary limited duty assignment because of long term illness. This Arbitrator finds that if the positions held by these career employees are to be replaced by other career employee’s, then there would be no position available for them upon their return to work. With respect to those employees who are on temporary limited duty assignments, they too, cannot be replaced because those positions had been specifically approved for them by OWCP. This Arbitrator finds that the Postal Service was placed in a “Catch 22” position in replacing career employees on prolonged illness with casuals on a continuous basis. Thus, it is this Arbitrator’s Opinion that the Service has demonstrated a reasonable justification for its long term use of casuals under these given circumstances and it does not contravene Article 7.1.B.1. See the arbitral decision of Arbitrator Mark Lurie in case no: H98C-1H-C 00234451 (March 6, 2003), in which, he found a reasonable justification suffices the long term use of casuals for prolonged illness does not contravene Article 7.1.B.1. However, this Arbitrator does find that the Postal Service violated Article 7.1.B.4 by using the same casuals beyond a two (2) ninety (90) day period in a calendar year.

Accordingly, this Arbitrator issues the following Award.

VIII. THE AWARD

The grievance is sustained in part and denied in part. The Postal Service is directed to cease and desist from hiring the same casuals in contravention of Article 7.1.B.4. The Postal Service provided a reasonable justification for its long term use of casuals’ consistent with Article 7.1.B.1. No monetary award is warranted under these circumstances.

Issued at San Antonio, Texas, the 22nd day of November 2003.

**Ruben R. Armendariz
Arbitrator**