

LIGHT/LIMITED DUTY ISSUES

INSTRUCTORS

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AND

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SENIORITY – ARTICLE 37.2

37.2.A.1 –

The U.S. Postal Service and the APWU, Clerk Craft Division, AFL-CIO agree to the following seniority principles which replace all former rules, instructions and practices.

Seniority

37.2.B – Coverage

These rules apply to all employees in the regular work force when a guide is necessary for filling vacant assignments and for other purposes. No employee, solely by reason of this Article, shall be displaced from an assignment the employee gained in accord with former rules.

Seniority

37.2.C – Responsibility

The Employer is responsible for day-to-day application of the seniority provisions of this Article. The installation head shall post and furnish a copy of an updated seniority list to the local union on a semi-annual basis, unless otherwise negotiated locally. The application of this Article shall be open to negotiation at the installation level with the designated official of the Union.

Seniority

37.2.D.1 – Application of Seniority

Seniority for full-time employees and part-time regular employees for bidding and other purposes shall be applied in accordance with the National Agreement. This seniority determines the relative standing among full-time employees and part-time regular employees. It begins on the date of entry into the Clerk Craft in an installation and continues to accrue as long as service is uninterrupted in the Clerk Craft and in the same installation, except as otherwise specifically provided for.

A look back at ELM 540

- Current problem: Management takes the position carriers must be assigned to clerk craft work based on FECA.
- While FECA does govern on the job injuries, ELM 540 is actually the product of step 4 negotiations with the NALC.
- Consider the award of Professor Carlton Snow in National Case: H94N-4H-C 96090200

- “The departure point in unraveling the disagreement must begin with any relevant contractual language. In this case, language to be reviewed is drawn from a regulation found in ELM Section 546.141(a). The regulation states:”

Current Employees. When an employee has partially overcome a compensable disability, the USPS must make every effort toward assigning the employee to limited duty consistent with the employee's medically defined work limitation tolerance (see 546.61 1). In assigning such limited duty the USPS should minimize any adverse or disruptive impact on the employee. The following considerations must be made in effecting such limited duty assignments.

“The regulation, then, provides a detailed guideline and order of preference for locating and assigning work for partially recovered current employees.

At the core of the dispute with regard to ELM Section 546.141 (a) is the meaning of language in the provision which requires the Employer to ‘minimize any adverse or disruptive impact on the employee.’”

“Mr. Vince Sombrotto, President of the National Association of Letter Carriers, testified that in 1979 he participated in negotiating changes to relevant portions of the Employee and Labor Relations Manual at issue in this case. Asked if he knew the circumstances which gave rise to the disputed language as a settlement to a Step 4 grievance, Mr. Sombrotto described the situation which led to the grievance as follows:

‘I had been hearing some, what I care to describe as horror stories about letter carriers that were on--were injured on the job and were being, in their view, harassed by management by being required to be assigned limited duty well beyond the installation that they worked in and on tours that they—that were alien to them.’”

“As the Union's concerns about the issue increased, the parties began discussing the problem. Mr. Sombrotto testified as follows about the nature of those discussions:

Q. And do you recall whether the parties began to discuss the possibility of resolving the NALC's concerns?

A. Yes. We were coming down to get to the point where we could make agreements on a pecking order, as I recall we termed it, as to where--what would be a carrier's rights that was on limited duty, where that carrier would be assigned, when they would be assigned, and so on.”

“And we came to the conclusion that the agreement, ultimate agreement, was that they could--they would have to be assigned in their own craft, in their own installation, on their own tour of duty if there was work available under those conditions.

Q. And did the agreement contemplate the possibility of assignment across craft lines if those conditions could not be satisfied?

A. Yes. (See Tr., vol. 2, pp. 50-51.)”

“Discussions between the parties ultimately produced the present language of ELM Section 546.141 (a). President Sombrotto's testimony made clear that the parties anticipated that cross craft transfers would occur. Moreover, the parties gave notice to other unions, specifically the APWU, that the negotiations were occurring, and no one voiced any objection to the agreement reached by management and the NALC on the language of ELM Section 546.141(a).”

APWU attempts to exclude Rural Carriers from Clerk Craft Assignments

In 1997, APWU initiated the following issue at Step 4:

“The issue is whether the Postal Service violates the National Agreement by assigning rural letter carriers to temporary limited duty work in the clerk craft when no work is available within their medical restrictions within their own craft.”

APWU Position:

“The APWU asserts that rural carriers have no access to the bargaining unit work of the clerk craft because rural carriers have no access within the APWU collective bargaining agreement. Assignments in the clerk craft are reserved for employees in the clerk craft through the National Agreement. The National Agreement does provide limited access to assignments in the clerk craft to other crafts through Articles 7, 12, and 13. Rural carriers, however, do not have access through these articles.”

The Postal Service Position:

“The Postal Service asserts that its workers are covered and protected by the Federal Employee Compensation Act (FECA) which makes certain provisions for the treatment of employees who suffer on-the-job injuries. In essence, FECA (5 CFR 353.304) provides that employees who are injured on-the-job through no fault of their own should not be penalized solely because of their injuries. To that end, the Postal Service is required to make ‘every effort’ to find such employees meaningful work. The FECA requirements have been expressly recognized by the parties in the National Agreement in Article 2 1, Section 4, Injury Compensation. This language has been in the National Agreement since 1973, and pursuant to this contractual commitment, the Postal Service published Section 546 of the ELM.”

“At the core of the APWU case is the contention that because Article I excludes rural carriers from coverage, rural carriers therefore cannot receive the protections and benefits of FECA and its implementing regulations, including Section 546. 1 cannot agree. Article I merely defines the scope of the bargaining unit represented by the APWU. It means that the APWU is not entitled to bargain for rural letter carriers and that its National Agreement does not apply to them. It cannot, by itself, negate, destroy, or cancel out other rights of employees which arise from other sources. Article 1, Section 2, lists the groups that are excluded from coverage under Article 1, Section 1. Item 7 on the list of those excluded is the rural letter carriers.”

“This exclusion does not mean that the rural carriers are not afforded the protections and benefits of FECA and its implementing regulations. Moreover, Article 1, Section 2 exclusions also encompass the Mail Handlers (Item 8) and the Letter Carriers (Item 9). Despite their exclusion, it is clear city Letter Carriers and the Mail Handlers are not absolutely precluded from working limited duty in the clerk craft.”

...Grievance Denied

APWU Seeks Duty Assignments

In May, 1995, a partially recovered letter carrier injured on the job was reassigned to the Clerk Craft as a PTF. The limited duty assignment consisted of duties found in the position description of a General Clerk.

The case was heard at the national level by Arbitrator Shyam Das, Case #E90C-4E-C-95076238.

“The APWU contends that the Postal Service in this case established a new full-time duty assignment, as defined in Article 37.1.B of the National Agreement, which it was required to post for bid under Article 37.3.A.1. In violation of Article 37, the APWU charges, the rehabilitated letter carrier was reassigned as a PTF clerk to a full-time regular duty assignment, without regard to the fact that she had no seniority in the Clerk Craft. This reassignment occurred when there were clerks with over 20 years of seniority waiting to bid on a day job with the hours and days off of this position, as well as PTF clerks waiting to be converted to full-time regulars.”

POSTAL SERVICE POSITION

“This issue, the Postal Service stresses, is predicated on the existence of a uniquely created rehabilitation assignment for an employee with work restrictions due to an on-the-job injury. ***[2]

***[2]The Postal Service acknowledges that the issue of whether the injured employee's reassignment actually is a uniquely created assignment or rather is a pre-existing duty assignment would be subject to review based on the particular facts of each case. That is not an interpretive issue, however. The Postal Service asserts that the APWU has acknowledged that, for purposes of deciding the interpretive issue in this case, the reassignment was a uniquely created rehabilitation assignment.”

Das Denies Grievance

“The General Clerk Modified assignment in question consists of a number of clerk duties -- a subset of duties included in the standard position description of a General Clerk. That does not detract from the fact that it was uniquely created as a rehabilitation assignment. As the Postal Service stresses, this assignment would not have existed, but for the obligation to find work for the injured employee. In a particular case, the APWU may factually challenge whether a designated rehabilitation assignment actually in a uniquely created position, under Section 546.222, but that is not the issue in this case.”

Das continues...

“In this case, the rehabilitation assignment in question was not created to meet the operational needs of the Postal Service, but to fit the medical restrictions of the injured employee with minimum disruptive impact on the employee. By definition, it would make no sense to treat such a uniquely created assignment as a duty assignment that must be posted for bid.

For the reasons set forth above, I conclude that the Postal Service was not required to post the rehabilitation assignment at issue under Article 37 and that the creation of that assignment did not impair the seniority rights of PTF clerks.”

Limited Duty Grievances - Ask And Answer These Questions

- 1 . Is the employee in a light duty (Article 13) or limited duty (ELM 546 and/or Article 13.4) status?
- 2 . What craft was the employee assigned before he/she began performing clerk craft duties?
- 3. Is the employee in a temporary or permanent limited duty status? If permanent, has the employee been assigned to the clerk craft and is he/she a full-time regular or PTF in the clerk craft?

Ask And Answer These Questions

- 4. What are the limited duty employee's physical limitations?
- 5. What clerk craft duties are being performed by the limited duty employee?
- 6 . What types of duties could the limited duty employee perform within his/her own craft?
- 7. Does your LMOU contain any provisions for the assignment of limited duty employees?

Duties carriers can perform in the carrier craft on light/limited duty

- 1. 3849's – Write up the 3849's for carriers that have a large amount of certified, postage due, insured, registered, C.O.C. or Express Mail.
- 2. Scan Delivery Confirmations for carriers with large volumes or delivery confirmations.
- 3. Look up forwards for carriers and send to CFS. You could go case to case.
- 4. Look up mail that comes back from CFS every day and see if there is a good forward on file. You could go case by case.

Duties carriers can perform - continued

- 5. Look up on the pink card apartments and addresses with a large turn-around or large volumes of mail to see if there is a forward on file and endorse the mail.
- 6. Go case-by-case and line out the pink cards that have passed one year time for forwards.
- 7. Help deliver to places that have large volumes of mail such as businesses.
- 8. If a carrier forgets his/her keys, bring them to them out on the street.

Duties carriers can perform - continued

- 9. Case up carriers' letters and flats that have large volume or the carrier starts late or is off on some type of leave.
- 10. Case up the bulk flats that are usually left on the floor and sometimes are delayed.
- 11. Help deliver Express Mail.
- 12. Help deliver priority mail that comes in late.

Duties carriers can perform - continued

- 13. Deliver certified mail to apartments when volume is heavy such as when apartment owners are starting the legal process of eviction or late notices, it has to be certified.
- 14. Check carriers vehicles that need gas, and go fill their tanks up for them.

What Do You Need To Document Your Grievance?

- 1 . Copy of the employee's limited duty job offer .
2. Copy of the limited duty employee's physical restrictions, if the job offer is unavailable or doesn't identify the restrictions.
3. Copy of the limited duty employee's PS Form 50's, before and after assignment to the clerk craft.

What Do You Need To Document Your Grievance?

4. Copy of ELM, Section 546 .142.a.
5. A list of duties in the limited duty employee's own craft that he/she could perform within his/her limitations .
6. Time records of the limited duty employee that is performing clerk craft duties .
- 7 . Notes from interview of supervisor/manager who assigned the limited duty employee to the clerk craft, identifying what, if any, efforts were made to assign the employee to his/her own craft .

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What Do You Need To Document Your Grievance?

8. Copy of the Overtime Desired List for clerk craft employees who were available and qualified to perform the duties worked by the limited duty employee .
9. Time records of any clerk craft employees (OTDL, non-OTDL, PTFs) who were available and qualified to perform the duties that were performed by the limited duty employee.

What Do You Need To Document Your Grievance?

10. A specific remedy for the contractual violation . Include a request that the violation cease and the limited duty employee be returned to his/her former craft, a list of the clerk craft employees who should be compensated and ask that they be paid at the applicable rate for all hours that the limited duty employee performed clerk craft duties . If the violation was temporary, provide the exact number of hours to which the clerk craft is entitled to be paid. If the violation is continuing, ask for a prospective remedy (until the violation ceases) .

PERMANENT LIGHT/LIMITED DUTY EMPLOYEES WHO CAN NO LONGER PERFORM WORK IN THEIR FORMER DUTY ASSIGNMENTS

Will the Former Duty Assignment be posted?

Light/Limited Duty

Article 37.1 .B . Duty Assignment - A set of duties and responsibilities within recognized positions regularly scheduled during specific hours of duty.

A "duty assignment" is not the same as a "standard position description" . The J-CIM explains in Article 37, Page 1, there is only one Mail Processing Clerk position, while Mail Processing Clerk duty assignments number in the thousands.

Identification of Newly Established Duty Assignments

- Post full-time duty assignments for unencumbered clerks if there are more clerks than duty assignments for 120 calendar days
- Same 120-day rule for PTRS
- Exceptions to the 120-day rule include 204(b) details, excessed employees and *employees who are not medically able to be awarded a bid.*
- Implementation delayed for 6 months

Light/Limited Duty

If a light/limited duty employee is no longer performing the work identified in his/her "duty assignment", it is important to determine if that employee is expected to return to his/her duty assignment or if the employee is permanently disabled and will never perform the "essential functions" of that assignment .

Light/Limited Duty

Handbook EL-307, Guidelines on Reasonable Accommodation, allows the Postal Service to place an employee into a duty assignment if the handicapped employee can perform the essential functions, including the essential physical requirements, of the assignment.

Light/Limited Duty

If the employee permanently cannot perform the essential functions of his/her former duty assignment, the assignment should be declared vacant and, in accordance with Article 37.3.A.1, posted for bid "to full-time employees eligible to bid" .

Light/Limited Duty

If an employee is injured on duty, and therefore in a limited duty status, it must be determined if that employee has a permanent disability. If the disability is partial but permanent, the FECA references maximum medical improvement (MMI) as having a "residual permanent disability which does not prevent them from being able to perform some type of work but not the work performed at the time of the injury."

Light/Limited Duty

Permanent limited duty employees are protected by the FECA and the ELM, Section 546.142. The Postal Service has an obligation to make every effort to assign work to a limited duty employee within his/her physical limitations "in the work facility to which the employee is regularly assigned, and during the hours when the employee regularly works". The Union's attempt to have a permanent limited duty employee's former duty assignment declared vacant and posted for bid does not eliminate these rights for the injured employee .

NEW CONTRACT LANGUAGE

- Relevant contract articles under the new CBA that affect Limited Duty Employees

ARTICLE 37.4D

Identification of Newly Established Duty Assignments

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ARTICLE 13 Section 4

M. Management will give the local union president advance written notification when it is proposed to reassign an ill or injured light or limited duty employee to a cross-craft assignment into an APWU represented craft.

ARTICLE 13 ASSIGNMENT OF ILL/INJURED REGULAR WORKFORCE EMPLOYEES

LIMITED DUTY AND REHABILITATION
ASSIGNMENTS WITHIN APWU
CRAFTS INVOLVING WORKERS
FROM OTHER CRAFTS

– *Propose change to ELM 546.2*

– *Article 13 Request For Reassignment*

ELM 546.2

In order to implement Part 546 of the ELM in a way that is fair to injured workers and fair to workers with seniority in APWU bargaining units, the parties agree that the following ELM 546.2 changes will be proposed pursuant to Article 19:

546.21 Compliance

Reassignment or reemployment under this section must be in compliance with applicable collective bargaining agreements and applicable law. Individuals so reassigned or reemployed must receive all appropriate rights and protection under the National Agreement of the craft to which the employee is being reassigned or reemployed. Any such reassignment or reemployment must be accomplished through Article 13 of the CBA applicable to the craft to which the employee is being reassigned or reemployed.

ELM 546.23 Types of Appointments

- A. A current full-time career employee may be reassigned to a full-time career position through Article 13 of the National Agreement applicable to the craft to which the employee is being reassigned or reemployed, if his or her job-related medical condition permits.
- B. A current or former part-time flexible career employee may be reassigned or reemployed to a part-time flexible career position through Article 13 of the National Agreement applicable to the craft to which the employee is being reassigned or reemployed.

Limited Duty and Rehabilitation Assignments MOU provisions

In the event that an employee is reassigned or reemployed into an APWU craft and Article 13.5 is applicable, then one *Part-Time Flexible (PTF)* employee in the gaining craft and installation shall be entitled to receive priority consideration to transfer to another craft or installation within 6 months. The priority consideration shall not be to the detriment of non-APWU employees with pending transfer requests.

MOU 2006-2010 CBA Limited Duty and Rehabilitation Assignments

With the union's negotiation of the MOU in the 2006 CBA on Limited duty and Rehabilitation Assignments within APWU Crafts involving Workers from Other Crafts, the USPS has agreed that reassignments or reemployment under Section 546 of the ELM *“must be accomplished through Article 13, applicable to the craft to which the employee is being reassigned or reemployed.”*

Other provisions of the MOU

- APWU agrees to withdraw any and all pending *national –level, field level grievances concerning interpretive issues regarding reassignment of ill or injured employees into APWU crafts.*
- If it is determined that the MOU is invalidated by a National-Level arbitration award or by a federal court decision, then the MOU will be null and void. If this occurs, the APWU may reinstate the above –referenced grievances with written notification