

# **LIMITED DUTY**



546.14 **Disability Partially Overcome**

546.141 **Obligation**

When an employee has partially overcome the injury or disability, the USPS has the following obligation:

- a. *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 546.611). 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:
  - (1) To the extent that there is adequate work available within the employee's work limitation tolerances, within the employee's craft, in the work facility to which the employee is regularly assigned, and during the hours when the employee regularly works, that work constitutes the limited duty to which the employee is assigned.
  - (2) If adequate duties are not available within the employee's work limitation tolerances in the craft and work facility to which the employee is regularly assigned within the employee's regular hours of duty, other work may be assigned within that facility.
  - (3) If adequate work is not available at the facility within the employee's regular hours of duty, work outside the employee's regular schedule may be assigned as limited duty. However, all reasonable efforts must be made to assign the employee to limited duty within the employee's craft and to keep the hours of limited duty as close as possible to the employee's regular schedule.
  - (4) An employee may be assigned limited duty outside of the work facility to which the employee is normally assigned only if there is not adequate work available within the employee's work limitation tolerances at the employee's facility. In such instances, every effort must be made to assign the employee to work within the employee's craft within the employee's regular schedule and as near as possible to the regular work facility to which the employee is normally assigned.
- b. *Former Employees.* When a former employee has partially recovered from a compensable injury or disability, the USPS must make every effort toward reemployment consistent with medically defined work limitation tolerances. Such an employee may be returned to any position for which he or she is qualified, including a lower grade position than that which the employee held when compensation began.

#### 546.21 Compliance

Reemployment or reassignment under this section must be in compliance with applicable collective bargaining agreements. Individuals so reemployed or reassigned must receive all appropriate rights and protection under the newly applicable collective bargaining agreement.

#### 546.22 Contractual Considerations

##### 546.221 Scope

Collective bargaining agreement provisions for filling job vacancies and giving promotions and provisions relating to retreat rights due to reassignment must be complied with before an offer of reemployment or reassignment is made to a current or former postal employee on the OWCP rolls for more than 1 year.

##### 546.222 Reemployment or Reassignment

A partially recovered current or former employee reassigned or reemployed to a different craft to provide appropriate work must be assigned to accommodate the employee's job-related medical restrictions. Such assignment may be to a residual vacancy or to a position uniquely created to fit those restrictions; however, such assignment may not impair seniority rights of PTF employees. Minimum qualification requirements, including written examinations, may be waived in individual cases for former or current employees injured on duty and being considered for reemployment or reassignment. When there is evidence (including that submitted by the medical officer) that the employee can be expected to perform satisfactorily in

the position within 90 days after assignment, a waiver may be granted by one of the following:

- a. The vice president of Human Resources for Headquarters and Headquarters field unit positions.
- b. An area Human Resources manager for area positions.
- c. A district Human Resources manager for other field positions

#### 546.23 Types of Appointments

Types of appointments available include the following:

- a. A current or former full-time career employee may be reemployed or reassigned to a full-time career position 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.
- c. A current or former noncareer employee may be reassigned or reemployed to the position held previously or, upon satisfactory demonstration of the ability to meet the job requirements and in accordance with the appropriate collective bargaining agreement, may be reassigned or reemployed to another noncareer position or noncompetitively converted to a career position (NOA 501).

#### 546.3 Restoration Rights

OPM is responsible for implementing the regulations contained in 5 U.S.C. 8151. These regulations are codified in 5 CFR Part 353. In accordance with 5 U.S.C. 8151(a), an individual injured or disabled on duty who resumes employment with the USPS is to be credited with the time during which compensation was received for purposes of certain rights and benefits based upon length of service.

#### 546.4 Employee Appeal Rights

Current or former employees who believe they did not receive the proper consideration for restoration, or were improperly restored, may appeal to the Merit Systems Protection Board under the entitlements set forth in Title 5 CFR, Part 353.



## UNITED STATES POSTAL SERVICE

475 L'Entant Plaza, SW  
Washington, DC 20260

October 14, 1983

Mr. William Burrus  
Executive Vice President  
American Postal Workers  
Union, AFL-CIO  
817 14th Street, NW  
Washington, D.C. 20005-3399

Re: M. Biller  
Washington, D.C.  
EIC-NA-C-74

Dear Mr. Burrus:

On October 5, 1983, we met to discuss the above-captioned national level grievance.

The American Postal Workers Union has maintained that the U. S. Postal Service is returning injured employees to duty under the CWCP Rehabilitation Program but, in doing so, is not complying with provisions of Section 341.1 of the Personnel Operations Handbook (P-11) which require that such assignments must be made ". . . in accordance with any collective bargaining agreement." In submitting this issue as an interpretive dispute at Step 4 of the grievance procedure, the union further maintained that Article 30 of the 1981 National Agreement permits locals to negotiate a number of items. The items specifically referenced in this instance are set forth in Article 30 as items numbered 15, 16 and 17, all of which pertain to light duty assignments.

During our discussion, you indicated that the union's purpose in submitting this matter to Step 4 was to raise the following question: Are limited duty employees covered by the collective bargaining agreement? As I indicated during our discussion, the answer to that question is set forth in Section 546 of the Employee and Labor Relations Manual (ELM). Specifically, 546.2 provides as follows:

Reemployment under this section will be in compliance with applicable collective bargaining agreements. Individuals so reemployed will receive all appropriate rights and protection under the applicable collective bargaining agreement.

Mr. William Burrus

2

In view of the foregoing, I do not believe that our respective organizations have a dispute over this issue. Where reemployment occurs under the circumstances described in Section 546, such reemployment must be in keeping with the provisions of any applicable collective bargaining agreements. (

Sincerely,

*George S. McDougald*  
George S. McDougald  
General Manager  
Grievance Division  
Labor Relations Department

cision is made. Do not issue OF 346, *U.S. Government Motor Vehicle Operator's Identification Card*, until the applicant furnishes part 1 of Form 2485 and it is reviewed for verification of physical fitness.

**332.4 Color Perception.** The ability to distinguish colors, either basic or shades, is required for the majority of positions in the Postal Service. However, an eligible must not be disqualified for appointment solely because of defective color vision. Most applicants with deficiencies in color perception cannot recognize red-green and have no impairment distinguishing blue-yellow. (For this reason most traffic signals now have a strong blue component in the green light.) For positions requiring vision for basic colors only, persons who successfully pass the Ishihara Pseudo-Isochromatic test, or comparable test (Falant), may be accepted.

**332.5 Near Perception.** Ability to read Jaeger No. 2 with 1 or both eyes, with or without glasses, is acceptable for the majority of positions.

### 333 Hearing

**333.1 Policy.** The hard-of-hearing and the deaf must be regarded as important segments of the labor market and must be considered for employment. They compare favorably productivity-wise (qualitatively and quantitatively) with employees who have normal hearing.

**333.2 Published Standards.** For the majority of positions in the Postal Service, the physical requirements paragraph contains the following general hearing standards: the ability to hear the conversational voice, with or without a hearing aid, is required for most positions; however, many positions may be suitable for the hearing-impaired.

**333.3 Suitable Positions.** Defects related to the hard-of-hearing may range from slight impairment of hearing to complete deafness. There is a corresponding variation in the degree of occupational adjustment of persons so afflicted. In mainstreaming the deaf and the hard-of-hearing, consideration must be given to possible environmental hazards.

**333.4 Adjustment.** Many circumstances affect the employability of the deaf and the hard-of-hearing. Many of these relate to the individual's adjustment to the handicapping condition. Past employ-

ment history is one of the most important factors to consider in determining fitness for continued or new employment.

### 333.5 Driving Positions

**333.51 Less Than 5 Ton.** There are no specific hearing requirements in order to qualify for the OF 346 for applicants who will drive vehicles less than 10,000 pounds GVW.

**333.52 5 Ton and Larger.** The hearing requirements set forth in Qualification Standard 5700 (MVO/TTO) (being able to hear the conversational voice in one ear with or without a hearing aid) pertain to applicants for positions requiring driving vehicles of 10,000 pounds GVW or more.

### 334 Orthopedic Disabilities or Amputations

In determining medical fitness of persons with amputations, deformities, or disabilities, the following general factors must be considered:

- a. Past employment record.
- b. Muscular residual power, especially the muscles actuating the shoulder and hips.
- c. Coordination of movements, body equilibrium and the sense of security of the individual.
- d. Endurance or will power of the person.
- e. Effectiveness of artificial aids if these are used.
- f. Working environment of the position under consideration.
- g. Whether the duties of the position would be hazardous to the individual or would endanger the safety of others.

## 340 Physical Fitness After Appointment

### 341 Limited Duty

**341.1 Temporary Assignments.** The postal installation head may temporarily assign an employee to limited or light duties when the employee is unable to perform the full duties because of medical reasons. If such assignments are made, they must be in accordance with any applicable collective-bargaining agreement.

**341.2 Initiating Fitness for Duty Examinations.** If, after a reasonable period of limited duty, the employee is unable to perform full duties of the craft and continues to bring medical substanti-

ation of inability to perform the regularly assigned duties, a request by the personnel officer, upon recommendation of the supervisor, must be made for a fitness for duty examination. In occupational injury or illness, the Injury Compensation Specialist may also request the examination when the disability, partial or total, continues.

### 342 Return to Duty After Extended Illness or Injury

**342.1 Certification After 21 Days.** Employees returning to duty after 21 days or more of absence due to illness or serious injury must submit medical evidence of their ability to return to work, with or without limitations. A medical officer or contract physician evaluates the medical report and, when required, assists in employee placement to jobs where they can perform effectively.

**342.2 Other Required Certification.** Employees returning to duty after an absence for communicable or contagious diseases, as well as mental and nervous conditions, diabetes, cardiovascular diseases, epilepsy, or following hospitalization, must submit a physician's statement stating unequivocally that they are fit for full duties without hazard to themselves or others, or indicating the duties which they are capable of performing. These also must be approved by the postal medical officer where available. In facilities where there is no medical officer, the opinion of a postal medical officer designated by the Region must be requested in questionable cases.

**342.3 Contents of Certification.** All medical certifications must be detailed medical reports and not simply a statement of ability to return to work. There must be sufficient data to make a determination that the employee can return to work without hazard to self or others. In instances of hospitalization for mental or nervous conditions, the attending physician's certificate must also state that the employee has been officially discharged from the hospital. In diabetes and epilepsy cases, the certificate must state that the condition is under adequate control. The medical officer (at installations with one) makes the final medical determination of suitability for return to duty and/or the need for limited duty assignment. Other offices must refer the case to the medical officer designated by the Region.

**342.4 Assignments.** Installation heads have the authority to assign any employee returning to duty to an environment away from situations that may have a direct bearing on the conditions which caused the inability to work. They also have the authority to provide useful work for the returning employee during a rehabilitation period, but must be guided by the terms of any applicable collective-bargaining agreement.

### 342.5 Questionable Conditions

**342.51 Inability to Perform Duties.** Employees who are unable to perform their duties because of disability, occupational injury, nonoccupational injury, or illness, and who have less than the 5 years service requirement for disability retirement, must have a fitness-for-duty examination by a postal medical officer or other authority (see 343). If the fitness-for-duty examination corroborates that the person is unable to perform the duties of the position, she or he should be separated.

**342.52 Employee Claim of Inability to Perform Duties.** If the employee claims inability to perform the full duties of the position, the postal installation head must not insist that the employee has to perform such duties without corroborative medical evidence. The installation head must refer the employee for a fitness-for-duty examination.

### 343 Fitness-for-Duty Medical Examination

**343.1 Authority to Administer.** *Fitness-for-duty examinations are always performed by a USPS medical officer or contract physician.* If necessary, the medical officer or physician may obtain a consultative specialist opinion from a local source. Contact the region and request that they designate a medical officer or contract physician for this purpose if one is not available.

**343.2 Cost.** Fitness-for-duty examinations are taken at the direction of the Postal Service at no cost to the employee. This includes any travel expenses incurred.

### 343.3 Obtaining Fitness-for-Duty Examination Appointments

**343.31 Form 2485.** The appointing officer completes Form 2485, *Medical Examination and As-*

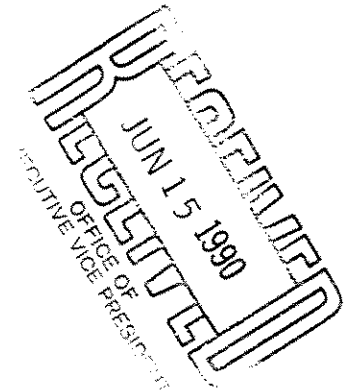




UNITED STATES POSTAL SERVICE  
 Labor Relations Department  
 475 L'Enfant Plaza, SW  
 Washington, DC 20260-4100

June 11, 1990

Mr. William Burrus  
 Executive Vice President  
 American Postal Workers  
 Union, AFL-CIO  
 1300 L Street, NW  
 Washington, DC 20005-4128



Dear Bill:

This letter is in response to your April 18 correspondence requesting management's interpretation of the contract as it applies to the assignment of ill or injured employees when excessing occurs.

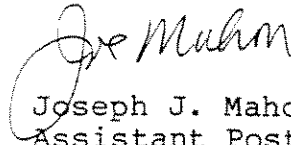
Management's interpretation of Article 12 of the contract is that, when excessing occurs in a craft, either within the installation or to another installation, the sole criteria for selecting the employees to be excessed is craft seniority. Whether or not a member of the affected craft is recovering from either an on- or off-the-job injury would have no bearing on his/her being excessed.

In the case of other craft employees who are temporarily assigned to the craft undergoing the excessing, they would have to be returned to their respective crafts. This is in accordance with the provisions of Article 13, Section 4.C. which reads:

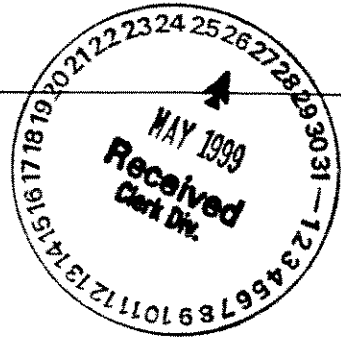
" The reassignment of a full-time regular or part-time flexible employee to a temporary or permanent light duty or other assignment shall not be made to the detriment of any full-time regular on a scheduled assignment or give a reassigned part-time flexible preference over other part-time flexible employees."

If there are any questions concerning this matter, please contact Robert Ledoux of my staff at 268-3823.

Sincerely,



Joseph J. Mahon, Jr.  
Assistant Postmaster General



May 12, 1999

MANAGER, HUMAN RESOURCES (AREAS)  
ANALYSTS, INJURY COMPENSATION (AREAS)

Subject: Snow Award - H94N-4H-C 96090200

Reference is made to the above-cited national arbitration award issued on November 4, 1998. Effective immediately, all postal installations must discontinue reassignment of full-time "current employees" who have sustained a compensable on-the-job injury into part-time flexible positions. In order to further clarify this arbitration award for injury compensation personnel, the following information is provided:

**Current Employee:**

This award clarifies how all full-time current (on the postal rolls) partially recovered employees who have sustained a compensable on-the-job injury will be reassigned into a different craft and revises the USPS previous policy. Revision to the ELM, Subchapter 540, Section 546.222 is pending approval at this time. All placement/reassignment actions involving partially recovered full-time current employees into a different craft must be as **full-time** employees in the craft. All craft placement/reassignment actions involving partially recovered "current" full-time employees into a different craft are covered by this revision.

Additionally, all seniority issues pertaining to rehabilitation actions of partially recovered full-time "current employees" into a different craft must be in accordance with Article 12 of the appropriate collective bargaining agreement.

**Form 50 Action:** In Accordance with Handbook EL-505, Chapter 11 "Rehabilitation Program", Exhibits 11.11b, element #29 must be coded as "RD - REINS COMP CURNT EMP" for all rehabilitation actions of current employees.

**Former Employee:**

Postal policy concerning the assignment of partially recovered **former** employees who have sustained a compensable on-the-job injury has not changed as a result of this arbitration award. Installations should refer to the memorandum issued by this office on May 4, 1994 (attached) for guidance on the options available for assigning partially recovered former employees.

**Form 50 Action:** In Accordance with Handbook EL-505, Chapter 11 "Rehabilitation Program", Exhibits 11.11b, element #29 must be coded as "RC - REINS COMP FRMER EMP" for all rehabilitation actions of former employees.

If you have any questions concerning this issue, please call Kevin McGovern at (202) 268-3679 or Dick Bauer at (202) 268-3678.

Larry B. Anderson

Attachment

cc: Yvonne D. Maguire  
Anthony J. Vegliante

## **Snow Award- H94N-4H-C 96090200**

### **Subject: Reassigned Injured City Letter Carriers into the Clerk Craft**

On November 4, 1998, Arbitrator Carlton Snow rendered the following decision in the above captioned case: *"...the Employer violated its agreement with the NALC when it reassigned a FTR, partially disabled, current employee of the Carrier Craft to the Clerk Craft as a PTF worker. In accordance with the agreement of the parties, the issue of remedy is remanded to all the parties so that they may attempt to agree on a negotiated settlement. The arbitrator shall retain Jurisdiction in this matter for 90 days from the date of the report in order to resolve any problems resulting from the remedy in the award."*

The USPS has unilaterally issued implementation instructions to the field concerning the above captioned national award. The USPS interpretation of the Snow Award is premature and totally erroneous on the issue of placing limited duty carriers into the Clerk Craft as FTRs.

The APWU disagrees with the USPS instructions and believe the service is misreading Arbitrator Snow. Embodied in the dicta of the this award, Arbitrator Snow states, "The APWU is correct in asserting that those reassignments and reemployment decisions under Section 546 of the ELM must be accomplished in accordance with commitments made by management in the APWU agreement."

Simply stated Snow wrote any agreement(s) the USPS negotiated with the NALC can't violate the contract between the APWU/USPS. Further, Snow decision reinforces management's obligation to comply with the following Sections of the ELM:

#### **546.21 Compliance**

Reemployment or reassignment under this section must be in compliance with applicable collective bargaining agreements. Individuals so reemployed or reassigned must receive all appropriate rights and protection under the newly applicable collective bargaining agreement.

#### **546.22 Contractual Considerations**

##### **546.221 Scope**

Collective bargaining agreement provisions for filling job vacancies and giving promotions and provisions relating to retreat rights due to reassignment must be complied with before an offer of reemployment or reassignment is made to a current or former postal employee on the OWCP rolls for more than 1 year.

The APWU feels Clerk Craft PTFs could be adversely affected while reassigning injured Letter Carriers into the Clerk Craft as FTRs. Further, it's the position of the APWU that prior to any other craft employees being assigned into the Clerk Craft as a FTR, Article 37, Sections 3,4 & 5 must be adhered to and any such "newly created" duty assignment offered to the reassigned carrier should first be posted for bid to the Clerks in that office.

We'll continue to pursue the rights of both our PTFs and FTRs during this struggle.

- (1) from one postal installation to another at the employee's request.
    - (2) from another craft to the Clerk Craft (voluntarily or involuntarily).
  - b. Upon reinstatement or reemployment.
  - c. Upon transfer into the Postal Service.
7. Change in Which Seniority is Modified. When mutual exchanges are made between full-time Clerk Craft employees in different installations, both of the exchanging employees shall take the seniority date of the junior employee involved and shall be reassigned as unassigned full-time employees.

### **Section 3. Posting, Bidding, and Application**

A. Newly established and vacant Clerk Craft duty assignments shall be posted as follows:

1. All newly established Clerk Craft duty assignments shall be posted to craft employees eligible to bid within 28 days. All vacant duty assignments, except those positions excluded by the provisions of Article 1, Section 2, shall be posted within 28 days unless such vacant duty assignments are reverted.

## Article 37.3.A.1.a

### a. Full-time duty assignments.

- (1) Newly established full-time duty assignments are posted to full-time employees eligible to bid and to currently qualified part-time regular employees eligible to bid who were previously full-time employees in the Clerk Craft in the same installation.
- (2) Vacant full-time duty assignments are posted to full-time employees eligible to bid.
- (3) Residual full-time vacancies are posted for bid to part-time regular employees eligible to bid, after the application of Section 4.C, Assignment of Unencumbered Employees, unless such vacancies are being withheld pursuant to Article 12.
  - (a) To be eligible to bid on a residual full-time vacancy, a part-time regular employee must be senior to the senior part-time flexible on the roll who states a preference on the duty assignment.
  - (b) Posting of residual full-time duty assignments to part-time regular employees will be concurrent with part-time flexible preferencing under Section 5.A.1.a.

Rights of letter carriers and clerks are no longer determined collectively. Management must be diligent in being certain that it can keep promises it makes to each craft. If promises to one craft infringe on rights of another, the Employer is obligated to negotiate the authority to implement such rights within the craft whose rights are being infringed. The APWU is correct in asserting that those reassignments and reemployment decisions under Section 546 of the ELM must be accomplished in accordance with commitments made by management in the APWU agreement. Simply because complying with one agreement would violate the other does not relieve management of its obligation to comply with both.

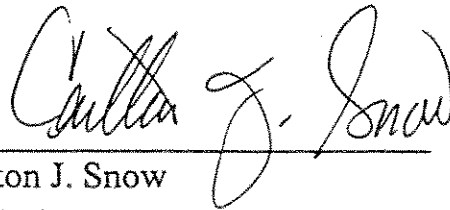
In order to comply with ELM Section 546.141(a), the Employer is not permitted to change the status of a disabled employee when switching crafts; but if the employee is a full-time regular worker and there are part-time flexible workers in the gaining craft, then reassigning the employee as a full-time regular worker could violate conversion rights of part-time flexible employees in the gaining craft.

Such an assessment, however, must be based on the APWU's agreement with the Employer, not that of the NALC. Whether or not such a transaction violates the APWU agreement is not before the arbitrator in this

## AWARD

Having carefully considered all evidence submitted by the parties concerning this matter, the arbitrator concludes that the Employer violated its agreement with the National Association of Letter Carriers when it reassigned a full-time regular, partially disabled, current employee of the Carrier craft to the Clerk craft as a part-time flexible worker. In accordance with the agreement of the parties, the issue of remedy is remanded to all the parties so that they may attempt to agree on a negotiated settlement. The arbitrator shall retain jurisdiction in this matter for 90 days from the date of the report in order to resolve any problems resulting from the remedy in the award. It is so ordered and awarded.

Respectfully submitted,



Carlton J. Snow  
Arbitrator

Date: 11-4-98





# American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

December 4, 1998

Moe Biller, President  
(202) 842-4246

Mr. Peter Bazylewicz, Manager  
Grievance & Arbitration Division  
Labor Relations  
United States Postal Service  
475 L'Enfant Plaza, S. W.  
Washington, D. C. 20260

National Executive Board  
Moe Biller  
President

William Burnus  
Executive Vice President

Robert L. Tunstall  
Secretary-Treasurer

Greg Bell  
Industrial Relations Director

C. J. "Cliff" Guffey  
Director, Clerk Division

James W. Lingberg  
Director, Maintenance Division

Robert C. Pritchard  
Director, MVS Division

Regional Coordinators  
Leo F. Pentakis  
Central Region

Jim Burke  
Eastern Region

Elizabeth "Liz" Powell  
Northeast Region

Terry Stapleton  
Southern Region

Raydel R. Moore  
Western Region

By Hand Delivery and First Class Mail

To Managers of Contract Administration  
or Grievance Arbitration for the NALC and  
APWU National Agreement.

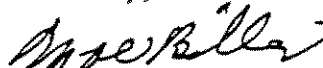
RE: Award of Arbitrator Snow in Case No. H94N-4H-C-96090200

Dear Mr. Bazylewicz:

In the above-referenced decision, Arbitrator Snow has remanded "the issue of remedy to all the parties so that they may attempt to agree on a negotiated settlement." Arbitrator Snow has retained jurisdiction for 90 days "to resolve any problems resulting from the remedy in the award."

The APWU intends to participate in the settlement discussions pursuant to Arbitrator Snow's award. Please notify Clerk Craft Director Cliff Guffey of all settlement discussions in this case. Either Mr. Guffey or his designee will participate on behalf of the APWU.

Sincerely,

  
Moe Biller, President  
APWU

MB/ema  
opeiu#2  
afl-cio  
cc: files

*O'Donnell, Schwartz & Anderson, P. C.*

*Counselors at Law*

*1300 L Street, N.W., Suite 1200*

*Washington, D. C. 20005*

(202) 898-1707

FAX (202) 682-9276



February 8, 1999

JOHN F. O'DONNELL  
(1907-1993)

RICHARD S. EDELMAN<sup>o</sup>  
OF COUNSEL

*60 East 42nd Street*  
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*New York, N.Y. 10165*  
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ASHER W. SCHWARTZ  
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SUSAN D. DRAKE\*\*\*

\*ALSO PA. AND MS. BARS

\*\*ALSO MD. BAR

\*\*\*VA. BAR ONLY

<sup>o</sup>ALSO NY BAR

<sup>oo</sup>PA. BAR ONLY

By Facsimile and Express Mail

Arbitrator Carlton J. Snow  
P. O. Box 5246  
Salem, OR 97304-0246

RE: United States Postal Service and National Association of Letter Carriers  
and American Postal Workers Union, AFL-CIO  
Case No.: H94N-4H-C-96090200

Dear Arbitrator Snow:

Your decision in the above-referenced case remanded the issue of remedy to "all the parties" and stated that the Arbitrator would "retain jurisdiction in this matter for 90 days from the date of the report in order to resolve any problems resulting from the remedy in the award."

The APWU, which received the report on November 10, 1998, hereby invokes the jurisdiction of the Arbitrator to resolve problems with implementation of the award. These problems include the fact that the Postal Service and the NALC have ignored the request of the APWU to participate in discussions of the remedy resulting from the case. In addition, the Postal Service has proceeded to apply the Arbitrator's decision in a manner that violates the APWU National Agreement and, therefore, contravenes the Arbitrator's Award and report.

The APWU requests that you convene a hearing on the remedy in this case at the earliest opportunity.

Sincerely,



---

Darryl J. Anderson  
Counsel for the APWU

cc: John W. Dockins  
Keith E. Secular, Esquire

**REGULAR ARBITRATION PANEL**

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**In the Matter of the Arbitration**

**between**

**UNITED STATES POSTAL SERVICE**

**and**

**AMERICAN POSTAL WORKERS UNION  
AFL-CIO**  
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**GRIEVANT:** Class Action

**POST OFFICE:** Shawnee, OK

**CASE NO: USPS #** G90C-4G-C 93012108  
G90C-4G-C 93012105

**APWU #** D-21-92  
D-12-92

**BEFORE:** I. B. Helburn, ARBITRATOR

**APPEARANCES:**

**For the U.S. Postal Service:** John Merritt; Labor Relations Specialist

**For the Union:** Ben Lyons; National Business Agent

**Place of Hearing:** Shawnee, OK

**Date of Hearing:** December 7, 1993

**AWARD:** The Postal Service violated the National Agreement in the assignment of limited duty work to Bill Cain and Joe King. For reasons set forth above, no make-whole remedy is ordered. However, it is ordered that in the future, where limited or light duty is concerned, the Postal Service shall comply with the National Agreement and the Local Memorandum of Understanding.

**Date of Award:** January 24, 1994

  
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SOUTHERN REGION REGULAR ARBITRATION

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE  
Shawnee, Oklahoma

-and-

AMERICAN POSTAL WORKERS UNION  
Shawnee Area Local

OPINION AND AWARD

OF THE

ARBITRATOR

USPS #G90C-4G-C 93012108  
APWU #D-21-92  
USPS #G90C-4G-C 93012105  
APWU #D-12-92  
Class Action

**APPEARANCES**

**For the Postal Service:**

John Merritt;  
Allen L. Southard;  
Edward Wagner;

Labor Relations Specialist  
Former Supt., Postal Opns.  
Supervisor, Mail Process.

**For the Union:**

Ben Lyons;  
David Lear;

National Business Agent  
Local President

**PERTINENT CONTRACT PROVISIONS (JX-1)<sup>1</sup>**

**ARTICLE 7**

**EMPLOYEE CLASSIFICATIONS**

**Section 2. Employment and Work Assignments**

A. Normally, work in different crafts, occupational groups or levels will not be combined into one job. However, to provide maximum full-time employment and provide necessary flexibility, management may establish full-time schedule assignments by including work within different crafts or occupational groups after the following sequential actions have been taken:

1. All available work within each separate craft by tour has been combined.
2. Work of different crafts in the same wage level by

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<sup>1</sup>JX, MX and UX refer respectively to Joint, Management and Union Exhibits.

tour has been combined.

The appropriate representatives of the affected Unions will be informed in advance of the reasons for establishing the combination full-time assignments within different crafts in accordance with this Article.

\* \* \*

## ARTICLE 13

### ASSIGNMENT OF ILL OR INJURED REGULAR WORKFORCE EMPLOYEES

#### Section 1. Introduction

B. The U.S. Postal Service and the Union recognizing their responsibility to aid and assist deserving full-time regular or part-time flexible employees who through illness or injury are unable to perform their regularly assigned duties, agree to the following provisions and conditions for reassignment to temporary or permanent light duty or other assignments. It will be the responsibility of each installation head to implement the provisions of this Agreement within the installation, after local negotiations.

#### 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 Public Health doctor or physician designated by the installation head, if that official so requests.

\* \* \*

#### Section 3. Local Implemenation

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.

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.

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.

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 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.

#### **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.

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.

C. The reassignment of a full-time regular or part-time flexible employee to a temporary or permanent light duty or other assignment shall not be made to the detriment of any full-time regular on a scheduled assignment or give a reassigned part-time flexible preference over other part-time flexible employees.

E. An additional full-time regular position can be

authorized within the craft or occupational group to which the employee is being reassigned, if the additional position can be established out of the part-time hours being used in that operation without increasing the overall hour usage. If this cannot be accomplished, then consideration will be given to reassignment to an existing vacancy.

\* \* \*

#### ARTICLE 15

##### GRIEVANCE-ARBITRATION PROCEDURE

##### Section 2. Grievance Procedure--Steps

##### Step 2:

(d) At the meeting the Union representative shall make a full and detailed statement of the facts relied upon, contractual provisions involved, and remedy sought. The Union representative may also furnish written statements from witnesses or other individuals. The Employer representative shall also make a full and detailed statement of facts and contractual provisions relied upon. The parties' representatives shall cooperate fully in the effort to develop all necessary facts, including the exchange of copies of all relevant papers or documents in accordance with Article 31. . .

\* \* \*

#### ARTICLE 19

##### HANDBOOKS AND MANUALS

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours, or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

\* \* \*

#### ARTICLE 30

##### LOCAL IMPLEMENTATION

B. There shall be a 30-day period of local implementation



to commence **October 1, 1991** on the 22 specific items enumerated below, provided that no local memorandum of understanding may be inconsistent with or vary the terms of the **1990 National Agreement**:

15. The number of light duty assignments within each craft or occupational group to be reserved for temporary or permanent light duty assignment.
16. 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.
17. The identification of assignments that are to be considered light duty within each craft represented in the office.

\* \* \*

#### **ARTICLE 31**

#### **UNION-MANAGEMENT COOPERATION**

##### **Section 3. Information**

The Employer will make available for inspection by the Union all relevant information necessary for collective bargaining of the enforcement, administration or interpretation of this Agreement, including information necessary to determine whether to file or to continue the processing of a grievance under this Agreement. Upon the request of the Union, the Employer will furnish such information, provided, however, that the Employer may require the Union to reimburse the USPS for any costs reasonably incurred in obtaining the information.

Requests for information relating to purely local matters should be submitted by the local Union representative to the installation head or his designee. All other requests for information shall be directed by the National President of the Union to the Senior Assistant Postmaster General for Human Resources.

Nothing herein shall waive any rights the Union or Unions may have to obtain information under the National Labor Relations Act, as amended.

#### **PERTINENT PROVISIONS - LOCAL MEMORANDUM OF UNDERSTANDING (JX-3)**

Items 15, 16, and 17.

Introduction:

The parties to this local memorandum of understanding agree that it is not in the best interest of the employer, the union or the employee to designate a specific number of light duty assignments in this installation. We feel that the interest of all the parties will be best served by adhering to the following agreed to procedures in order to implement those provisions of Article 30, items 15, 16 and 17 of the 1990-1994 National Agreement.

Item 15. Number of light duty assignments within each craft or occupational group to be reserved for temporary or permanent light duty assignment.

Light or other duty assignments shall be provided to all employees comprising the regular work force in accordance with Article 13 of the 1990-1994 National Agreement.

Item 16. 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.

No assignments shall be specifically reserved as light duty. Instead, as needs arise, the assignment shall be determined after negotiations between management and representatives of the union on behalf of the concerned employee in accordance with Article 13 of the National Agreement. That agreed upon assignment shall then be reserved as a light duty assignment for that employee.

In order to implement the above, any employee who submits a written request, in accordance with Article 13.2.A of the 1990 national agreement, will also furnish the union with a copy of the request and any supportive medical documentation. The installation head or designee will as soon as possible schedule a meeting with the union President or designee to negotiate and establish the light duty assignment.

Prior to providing light duty to an employee of another craft, local management and local Union officials will meet and determine if such light duty is available within the clerk craft. Every effort will be made to exhaust assignments within a craft before crossing crafts.

No member of the work force will be adversely affected by assignments of a member of another craft to a light duty assignment within the clerk craft.

Item 17. The identification of assignments that are to be considered light duty within each craft represented in the office.

In the clerk and maintenance craft of the Shawnee Post Office, duty assignments under this item shall be determined after negotiations between management and representatives of the APWU. After the assignment has been determined it shall be identified as a light duty assignment for (sic) that employee.

**PERTINENT PROVISIONS - EMPLOYEE & LABOR RELATIONS MANUAL**

**546 Reemployment of Employees Injured on Duty**

**546.1 Law**

**546.11 General.** The USPS has legal responsibilities to employees with job-related disabilities under 5 USC 8151 and the Office of Personnel Management's (OPM) regulations as outlined below.

**546.14 Disability Partially Overcome**

**546.141 Obligation.** When the employee has partially overcome the injury or disability, the USPS has the following obligation:

a. Current Employees. When an employee has partially overcome a compensable injury, the USPS must make every effort toward assigning the employee to limited duty consistent with the employee's medically defined work limitation tolerance (see 546.611). In assigning such limited duty, the USPS should minimize any adverse or disruptive impact on the employee. The following considerations must be made in affecting such limited duty assignments:

(1) To the extent that there is adequate work available within the employee's work limitation tolerances; within the employee's craft; in the work facility to which the employee is regularly assigned; and during the hours when the employee regularly works; that work constitutes the limited duty to which the employee is assigned.

(2) If adequate duties are not available within the employee's work limitation tolerances in the craft and work facility to which the employee is regularly assigned within the employee's regular hours of duty, other work may be assigned within that facility.

(3) If adequate work is not available at the facility within the employee's regular hours of duty, work outside the employee's regular schedule may be assigned as limited duty. However, all reasonable efforts shall be made to assign the employee to limited duty within the employee's craft and to

keep the hours of limited duty as close as possible to the employee's regular schedule.

\* \* \*

**PERTINENT PROVISION - HANDBOOK EL-311 (JX-4)**

**341 Limited Duty**

**341.1 Temporary Assignments.** The postal installation head may temporarily assign an employee to limited or light duties when the employee is unable to perform the full duties because of medical reasons. If such assignments are made, they must be in accordance with any applicable collective-bargaining agreement.

**BACKGROUND**

This case concerns limited duty assignments for two city carriers in the Shawnee, Oklahoma post office. Joe King, a PTF, suffered a job-related knee injury in 1992. On July 13, 1992 he was restricted from continuous walking and limited to 1-2 hours daily of intermittent walking plus one hour of standing, climbing stairs and climbing ladders. Thereafter the Postmaster assigned King to distribute SCF letters, return mail from the throwback case and answer the phone. He did other clerk duties as well as straightening the loading dock. Edward Wagner, Supervisor of Mail Processing, testified that King did clerk duties. Total time involved was 472.35 hours before King transferred to the Oklahoma City post office. The Union was not given a copy of a request for limited duty and was not consulted about King's assignment. The Union did receive a copy of the form showing King's physical limitations.

On July 7, 1992 the Union filed a Step 2 grievance (D-12-92)

claiming violations of Articles 13.4.A and 37 of the National Agreement and Item 16 of the LMOU because King's cross-craft assignment was not discussed with the Union prior to implementation and because there was said to have been work in the carrier craft which King could have performed. The Union asked that King be returned to the carrier craft and that straight time be paid to the clerks for all hours King worked in that craft.

The grievance was denied on the basis that King's condition precluded casing and carrying mail. The statement of additions and corrections asserted that "Mr. King was not disabled to the extent that it was ever necessary to assign him to another craft, especially since he performed duties just as strenuous in the cllerk craft as those in the craft to which he was assigned. . . ." (JX-2, p. 4). On January 4, 1993, the grievance was denied at Step 3 because:

The FECA requires Management to provide limited duty even if crossing craft is required. To do so is not violative of the provisions of the collective bargainin agreement. The Memorandum of Understanding RE: Cross Craft - Office Size - Articel (sic) 7, 12, and 13 is further illustrative of Management's right to cross crafts in the instant case" (JX-2), p. 2).

Bill Cain, a full-time regular, worked a park and loop route before his knee collapsed while on duty, thereafter requiring surgery. During his recuperation he was placed on limited duty for 2-3 months, consistent with his medical limitations, which were not provided the Union because Injury Compensation said that medical information was confidential. Allen Southard, then Superintendent of Postal Operations, testified that Cain cased his route and a

couple others and labeled cases. David Lear, local President, testified that Cain distributed letters in cases, worked box mail, bulk mail and first class mail and address changes and answered the phone. The Union was not consulted about Cain's assignment and was not shown any request for limited duty.

On November 16, 1992, the Union filed a Step 2 grievance (D-21-92) alleging violations of Articles 13.3.C and 13.4.A and Items 15, 16 and 17 of the LMOU because Cain worked in the clerk craft and "management did not provide any certification of employee's illness, employee's request for limited duty assignment. . ." (JX-2, p. 5). The requested remedy was the same as for the grievance involving King.

The grievance was denied because the "ELM 546.141 directs employees injured on the job to be placed in work assignments within their medical limitations, regardless of craft" (JX-2, p. 4). The Step 3 appeal noted that:

Management violated the above articles when they assigned carrier Bill Cain who is on limited duty to work within the carrier craft, or reducing the casual & PTF hours in the carrier craft to accommodate (sic) his needs. And made the assignment to the clerk craft unilaterally without first providing the APWU with proper documentation of injury or discussing the assignment as outlined and required by the LMOU (JX-2, p. 3).

Management's January 4, 1993 response was the same as that for the grievance over King's assignment.

Both grievances were certified for arbitration and heard on December 7, 1993 by the undersigned in Shawnee, Ok. The parties stipulated that the grievances were properly before the arbitrator.

Witnesses were sequestered, affirmed before testifying and cross examined. Documentary and testimonial evidence was received. Post-hearing briefs were filed and received on or before January 18, 1994, the date the record was closed.

#### **ISSUE**

The Postal Service would frame the issue as follows:

Did the USPS violate the Collective Bargaining Agreement (CBA) in the assignment of limited work to Mr. Cain and Mr. King?

The Union sees the issue as:

Did the Postal Service violate Articles 7, 15, 13, 19, 30 and 31 by assigning letter carriers Joe King, a part-time flexible, and Bill Cain, a full-time regular, to the Clerk Craft in a temporary limited duty assignment, and, if so, what should be the proper remedy?

The arbitrator has framed the issue as follows:

Did the Postal Service violate the National Agreement in the assignment of limited duty work to Bill Cain and/or Joe King and, if so, what is the appropriate remedy?

#### **POSTAL SERVICE POSITION**

For reasons summarized below, the Postal Service contends that the grievances should be denied because no violation occurred.

1. The Union bears the burden of proof in contract interpretation cases and must demonstrate by clear and convincing evidence both that Management violated the National agreement and that the remedy is allowed by the Agreement.

2. The Postal Service was obligated to provide limited duty for Cain and King. Duties performed were not exclusively clerk craft duties and some could have been done by anyone. Furthermore,

neither Articles 13.3.C, 13.4.A and 37 or the LMOU apply because these cases involved limited, not light, duty.

3. Issues in the cases at bar have been decided by many arbitrators so that the doctorines of stare decisis and res judicata are properly applied herein.

4. The National Agreement is intended to benefit injured employees, not the Union. No clerk was adversely affected by Cain's and King's assignments. There was still overtime worked. It was not possible to cut supplemental hours due to the nature of that work.

5. The argument that King could have used a special chair to case mail was without merit. The argument was new in arbitration and the Union did not show that the chair would work. The chair did not appear to be a good solution when compared with the case to be worked. Medical evidence is relevant were light duty or a reassignment are being considered, but not in this case. Since the evidence was not allowed, there is no proof that it helps or hurts the Union case.

6. The Postal Service submitted two national and two regional awards in support of its contentions.

#### **UNION POSITION**

The Union believes that the National Agreement has been violated and that the grievance should be sustained for reasons summarized below.

1. The grievances are arbitrable. For the first time at the



arbitration hearing the Postal Service challenged arbitrability on the basis of res judicata and collateral estoppel. However, no supporting evidence was offered or awards cited.

2. The Postal Service fatally violated Article 15.2 and Article 31 by failing to respond to the Union's request for doctors' statements and accident reports concerning Cain. While the failure was justified by testimony that Injury Compensation's orders were not to provide the information, similar information for King was provided. This point was raised at Steps 2 and 3 of the grievance procedure but the Postal Service did not respond.

3. The Postal Service did not make every effort to find work in the carrier craft for Cain and King. Management witnesses testified that both did craft work. The ELM, Section 564.141.a(1) and Article 13.4.A and B must be considered by Management. Mail could have been routed to carrier cases. Routes could have been cased, particularly with the use of a specialized chair. The LMOU between the Postal Service and the NALC establishes light duty items for carriers, some of which could have been assigned to Cain and King. No part-time or supplemental hours were cut in the carrier craft in order to provide light duty.

4. The Postal Service did not inform the Union before the cross-craft assignments were created. The award of National Arbitrator Richard Mittenthal in case no. H8N-5B-C 22251 establishes that Article 13 applies to light and limited duty. The parties negotiated locally to implement Article 13. Items 15, 16 and 17 of the LMOU were intended to apply to light and limited duty

assignments. Both the National Agreement and the LMOU require that Management inform the Union before establishing a cross-craft assignment.

5. In addition to the Mittenthal award, six regional awards and one Step 4 settlement were introduced as supporting documents.

#### **DISCUSSION**

For reasons set forth below, the Postal Service has violated the National Agreement. However, no monetary remedy is ordered.

The language of the National Agreement, the ELM and relevant national interpretive awards establishes the responsibility of the Postal Service to provide limited duty work for King and Cain. Article 13 establishes the general principle that, subject to certain provisions and conditions, light-duty assignments will be made available. Section 546 of the ELM strengthens the requirement of Article 13 by noting the "obligation" of the Postal Service and elaborates on the provisions and conditions for implementing limited duty assignments. In a 1985 national award in case no. H1C-4K-C 17373, Arbitrator Richard Mittenthal wrote of the ELM:

. . . Part 540 of the ELM was a response to the fact that the Postal Reorganization Act placed all Postal Service employees under the coverage of the Federal Employees Compensation Act (FECA). Part 540 was a means of implementing the injury compensation program set forth in FECA. It concerns employees who suffer job-related disabilities; it requires the Postal service to make "every effort" toward placing an injured employee on "limited duty" consistent with his work limitations. Management must make that "effort" even though no "request" has been submitted by the employee and even though no "light duty assignments" have been negotiated by the local parties. . . (p. 6)

In a national award issued in January 1983, Arbitrator Benjamin

Aaron had written that the Postal Service was obligated to comply with FECA.

However, even though the issue of the Postal Service's obligation to provide limited duty is settled, the question of which, if any, provisions and conditions must be complied with, is not. Where such local provisions and conditions are not inconsistent with the general obligation, they must be met. The question of the existence of relevant provisions and conditions and compliance with them is case specific. As such, the doctrines of res judicata and stare decisis are not properly applied herein.

To set the stage for further discussion it is critical to review the 1983 national award of Arbitrator Mittenthal in case no. H8N-5B-C 22251. In that case, as in the case at bar, the Postal Service argued that "light duty" as used in Article 13 was intended to exclude cases where limited duty was called for. Arbitrator Mittenthal responded:

Chapter 540 establishes an "injury compensation program." It refers to "employees injured on duty" and requires that they be placed on "limited duty" once they have partially overcome their disability. But these Chapter 540 rights cannot reduce the scope of Article 13. There is nothing in the National Agreement which would prevent an employee from exercising rights, if applicable, under both Chapter 540 and Article 13. It is true that Chapter 540 speaks only of "limited duty" while Article 13 speaks of "light duty." But, absent any explanation of the functional difference between these terms, I believe this is a distinction without a difference. . .(pp. 4-5).

Mittenthal's interpretation of this language came well before the most recent LMOU was negotiated. The LMOU, Items 15, 16 and 17, obviously relates to Article 13. Article 30 requires that no LMOU

"may be inconsistent with or vary the terms of the 1990 National Agreement." Thus, the term "light duty" must be given the same meaning in the LMOU that the Mittenthal award has given it in the National Agreement. Where the phrase "light duty" is used in Items 15, 16 and 17 of the LMOU, it must be read as "light or limited duty."

Item 16 is particularly relevant to the case at bar. In that item, local Management has bound itself to meet with the local Union to determine necessary light duty assignments. The requirement to meet was repeated and applied specifically to instances where the Postal Service contemplated a cross-craft assignment. The Postal Service ignored this requirement where both Cain and King were concerned, thus violating the LMOU.

The requirement that Management consult with the Union is not inconsistent with the National Agreement, but simply provides an additional provision and condition to be met. Presumably, if bilateral talks resulted in impasse, the Postal Service would be free to implement its light duty plan and the Union would be free to contest the action through the grievance procedure. Article 13.3.C and the LMOU state that no full-time employee is to be adversely affected by a light-duty assignment given another employee. The Union has the right and the obligation as the certified bargaining unit representative to police relevant agreements. Consultation with Management prior to the implementation of a light-duty assignment is a critical means for the Union to try to ensure that there is no adverse impact.

The LMOU also was violated when the Postal Service refused to provide medical data for Cain. Item 16 of the LMOU specifies the requirement to provide the data. The argument that no medical data were provided because Injury Compensation declared the data confidential is unpersuasive for two reasons. First, the parties negotiated the LMOU and Management is not now in a position to disavow its end of the bargain. Second, Management has been inconsistent. The diagnosis and medical limitations for King were given to the Union in response to an earlier request.

The Union further argues that the Postal Service violated Article 13.4.A of the National Agreement and Item 16 of the LMOU by not making every effort to assign Cain and King within the carrier craft before using them in the clerk craft. In a 1990 regional award concerning Article 13.4.A in case no. S7C-3B-C 21452 and case no. S7C-3V-C 21454, Arbitrator Ernest E. Marlatt wrote:

The party bearing the affirmative on an issue has the burden of proof. The Postal Service has sought to reverse this burden by arguing that "the Union showed no duties which were available in the carrier craft that would have provided useful, cost efficient, and productive work." But the Union is not required to make such a showing. It is up to the Postal Service to prove that it had exhausted all possible assignments within the Carrier craft before assigning Ms. Brooks to perform Clerk craft work (p. 4).

Arbitrator Marlatt's sentiments were echoed by Arbitrator Harvey Nathan in a December 1993 regional award in case no. C0C-4M-C 5800.

In the case at bar, the Postal Service provided no evidence during the grievance procedure that serious consideration was given to possible carrier duties, or even to a possible combination of carrier and clerk duties. A special chair was ordered for King.

Management argued that the configuration did not seem to be appropriate for casing, but there was no indication that the chair was actually tried by King or by Cain and found wanting. In view of the absence of argument in the grievance procedure and the scant evidence offered in the hearing, the only conclusion that can be drawn is that not every effort was made to retain King and Cain in the carrier craft. Once again, the National Agreement was violated.

In its brief, the Union has alleged violations of other Articles, specifically 7, 15 and 31. These have not been considered because they were not mentioned during the grievance procedure. Articles 13, 19 and 30 were mentioned directly or were obviously implicated and have been considered.

The discussion now turns to remedy. In both grievances herein considered, the Union asked for straight-time pay for all hours worked by Cain and King. The inference must be that overtime opportunities were not diminished by the cross-craft assignments. Indeed, the Union did not attempt to show that there were clerks on the overtime desired list who were deprived of overtime.

Southard testified that all full-time and PTF clerks worked a 40 hour week during the periods in question. That testimony stands unrebutted, as the Union did not show that any clerk was adversely affected by the cross-craft assignments. Therefore, this case must be distinguished from those submitted by the Union in which a monetary remedy was ordered. Arbitrators Harvey Nathan (COC-4M-C 5800), James Martin (C7C-4H-C 4540), Philip W. Parkinson

(E4C-2A-C 37856) and Ernest E. Marlatt (S7C-3B-C 21452 & S7C-3V-C 21454) found that individuals had been adversely affected by Postal Service contract violations.

Under the facts of this case, the Union has not shown an adverse impact, even though the evidence clearly demonstrates a series of violations of the National Agreement. Because no money was lost, a monetary remedy would be punitive rather than make-whole. That cannot be justified.

**AWARD**

The Postal Service violated the National Agreement in the assignment of limited duty work to Bill Cain and Joe King. For reasons set forth above, no make-whole remedy is ordered. However, it is ordered that in the future, where limited or light duty is concerned, the Postal Service shall comply with the National Agreement and the Local Memorandum of Understanding.



I. B. Helburn, Arbitrator

Austin, Texas  
January 24, 1994

**REGULAR REGIONAL ARBITRATION PANEL**

**In the Matter of the Arbitration** )  
 )  
 **between** ) **Grievant:** Shirley Beuerlein  
 )  
 **United States Postal Service** ) **Post Office:** Wichita, Kansas  
 ) **Corporate Hills Station**  
 **and** )  
 ) **Case No:** 190C-4I-C 960702844  
 **American Postal Workers Union** )

**Before:** John C. FLETCHER, Arbitrator

**Appearances:**

**For the Postal Service:** Thomas D. Brasser  
Labor Relations Specialist  
USPS - Central Plains District  
7117 W. Harry Street  
Wichita, Kansas 67276-9401

**For the Union:** Mr. Tom Maier  
National Business Agent  
APWU - Clerk Division  
Post Office Box 19009  
Oklahoma City, Oklahoma 73144

**Place of Hearing:** Wichita, Kansas  
**Date of Hearing:** March 20, 1997  
**Date of Award:** April 18, 1997  
**Relevant Contract Provisions:** Article 7 and 13, National Agreement  
**Contract Year:** 1994 - 1998  
**Type of Grievance:** Contract

**Award Summary**

Management violated the Agreement when it provided an injured on-the-job Rural Carrier Relief limited duty work in the Clerk Craft, with out first making an effort to find available work in the Rural Carrier Craft. Grievant is to be paid, at overtime rates, for the total hours the Rural Carrier Relief worked in the Clerk Craft.

  
John C. FLETCHER, Arbitrator



OPINION AND AWARD

190C-4I-C 960702844 - Shirley Beuerlein  
Wichita, Kansas

**Background:**

Commencing on or about September 29, 1995, Management of the Corporate Hills Station began utilizing a Rural Carrier Relief ("RCR"), that had been injured on-the-job<sup>1</sup> and had significant work restrictions, to "pike mail" for a customer that utilizes four Post Office Box numbers and one street address.<sup>2</sup> The task of piking mail for this customer takes approximately one hour per day. APWU filed a grievance on behalf of a Distribution Clerk assigned to the facility, contending that Management did not first attempt to find work for the injured RCR in her own Craft, and that it failed to consult with the local APWU President, as required by Item 17 E of the LMOU. The grievance remained unsettled, and was timely appealed to this arbitration.

**THE ISSUE**

The parties Advocates are in agreement that the issue in this arbitration should be stated as:

Did Management violate the terms of the National Agreement by allowing a limited duty Rural Carrier Relief to perform Clerk Craft work, and if so, what shall the appropriate remedy be?

There are no procedural or jurisdictional impediments to a final and binding award in this matter.

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<sup>1</sup> The RCR was injured while driving her personal vehicle from work. The Postal Service said that Rural Carriers commuting in their own vehicles are considered as on-duty during that time.

<sup>2</sup> "Piking mail consists of flipping through each tray, looking at each piece, to insure that the right mail for each box is in the right sort. Those that are mis-sorted are placed in the proper location.

## THE POSITION OF THE PARTIES

### The Position of the American Postal Workers Union:

APWU contends that Management did not make any effort to find suitable limited duty work for the injured RCR in the Rural Carrier Craft before it gave her work in the Clerk Craft. That suitable work within the RCR's limitations was available in her own Craft cannot be denied, APWU says, as the Clerk Craft work she did was identical to other work available in the Rural Carrier Craft, in the facility. Further, APWU notes, Item 17 E of the Wichita LMOU provides:

Prior to assigning such work outside of the employee's craft and it is determined that the only light duty the employee can perform is in the Clerk Craft the President of APWU or his/her designee will be consulted prior to the assignment. Said employee will be assigned to Tour 1 or 3.

And in this case the Local President, or his designee was not consulted, it is argued.

In support of its arguments the Union relies upon the following arbitration award:

C7C-4U-C 26744

Fletcher

February 10, 1992

### The Position of the United States Postal Service:

The Postal Service first notes that the RCR was injured on-the-job. This made her a candidate for limited duty, not light duty. A distinction exists between limited duty and light duty and the obligations of Management are different in each. In the case of on-the-job injuries the Service has an obligation to provide the injured employee with available work. This was done in this instance, it notes. If work is not available within an employees own Craft, Management is privileged to assign the recovering employee available work in other Crafts, it is argued.

The Service also contends that APWU's reliance on Item 17 E of the LMOU is misplaced. It notes that Item 17 pertains to light duty, and not limited duty. Light duty pertains to off-duty illness or injury, Limited duty deals with on-duty injury or illness. The LMOU does not require that Management consult with the Local President when providing limited duty work to an on-the-job injured employee, it is stressed.

In support of its several arguments, the Service relies upon the following arbitration awards:

E1C-2W-C 5691  
H8N-5B-C 22251  
E4C-2A-C 41224  
S7C-3C-C 29417

McConnell  
Mittenthal  
Zumas  
Moberly

September 26, 1983  
November 14, 1983  
May 20, 1991  
April 13, 1992

#### DISCUSSION

Paragraph 546.141 of the ELM develops a pecking order for the assignment of work to employees that have partially overcome an on-the-job injury or disability. Part 546.141a.(1) obligates management to first look for work within the employees own Craft, before making an assignment of work in a different Craft. In this matter it is obvious that this pecking order was not followed when the RCR was assigned the task of piking mail in the Corporate Hills facility. Instead, what is obvious is that the Management of the Corporate Hills facility seized upon the injured RCR as a fortuitous circumstance whereby it would have another body to aid in getting the mail ready for an important customer. In Item 18 of the Form 2608 completed after the Step 1 hearing on this grievance, the Service's Supervisor Customer Service noted:

The carrier ... has been utilized to the extent possible to auxiliary work for the station. The mail that is in question in the grievance does not arrive at the station until 5:30 AM or 7:00 AM each morning. It is critical that this mail is piked before the caller service arrives at 8:30 AM. The Clerks are busy at that time of day with distribution and sortation of box mail and mail for the Carriers. To get this mail piked for delivery to the

customer we have been utilizing two limited duty employees (one APWU Clerk and one NRLCA Rural Carrier) at different times to go thru the trayed letters. The work falls within the restrictions of both employees.

No mention is made of unavailability of work within the RCR's Craft. No mention is made of an attempt to find work in the Rural Carrier Craft. The prime consideration, it is obvious, was the pressure to get the mail piked for the customer, and that the work was within the restrictions of the RCR. These considerations are not within the pecking order of the ELM. Further, that "Clerks are busy at that time of day" is not a basis for determination if the work is suitable for assignment across Craft lines.

At Step 2, Management noted that when adequate duties are not available within an injured employees Craft it is permissible to assign other work in the facility from other Crafts that would be within the employees restrictions. This statement though does not indicate what steps were taken to find work within the RCR's Craft, or for that matter, does it suggest that such efforts were made at all. Importantly, though, it does not state that work within the Rural Carrier Craft was not available to the injured RCR. This is fatal to Management's position here.

Because Management did not make the argument, at either Step 1 or Step 2, that no work was available within the RCR's own Craft, the Union was not obligated to attempt to demonstrate that such work was available, as suggested in the Service's Step 3 denial. It would seem that when Management is making a light or limited duty cross-Craft assignment, it should, if the assignment is being challenged, point out from the very beginning those efforts it made to find suitable work in the employees own Craft.<sup>3</sup> This, especially so in the case of Rural Carriers it is attempting to place in cross-Craft

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<sup>3</sup> The ELM requires that Management attempt to find work in the injured employees own Craft first.

assignments, because of the proscription in Article 13 of the RCA Agreement that "regular rural routes shall not be considered for any light duty assignments."

Finally we will look at the Services contention that Item 17 of the LMOU pertains only to light duty and not to limited duty. Review of Item 17 indicates that it does not mention limited duty, only light duty. It is generally accepted that light duty is the term applicable to non-job related injury or illness, while limited duty is the term related to on-duty occurrences. Accordingly, the Arbitrator cannot conclude that Item 17 of the LMOU is applicable to limited duty matters. While good labor-management practice would be enhanced by consultation before a limited duty employee from a different Craft is given work in the Clerk Craft, the LMOU cannot fairly be read as requiring this action before the assignment is made.<sup>4</sup>

The Agreement was violated. The grievance will be sustained.

#### A W A R D

Management violated the Agreement when it provided an injured on-the-job Rural Carrier Relief limited duty work in the Clerk Craft, with out first making an effort to find available work in the Rural Carrier Craft. Grievant is to be paid, at overtime rates, for the total hours the Rural Carrier worked in the Clerk Craft.

  
\_\_\_\_\_  
John C. FLETCHER, Arbitrator

Mount Prospect, Illinois - April 18, 1997

<sup>4</sup> See this Arbitrator's award in 190C-11-C 94050594, *Des Moines BMC* (1996) where an opposite conclusion was reached. However, in that case the parties had two Step 3 decisions that treated limited and light duty similarly in the application of Item 16 of their LMOU. Evidence that the LMOU at Wichita was applied in the same manner is missing in this record.

OKLAHOMA DISTRICT ARTICLE 15 PILOT PROGRAM  
(Non-citable outside the Oklahoma District)

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IN THE MATTER OF ARBITRATION	)
	)
between	)
	)
UNITED STATES POSTAL SERVICE	)
	)
and	)
	)
AMERICAN POSTAL WORKERS UNION,	)
AFL-CIO	)
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POST OFFICE: Muskogee, OK  
CASE NUMBER: S4C-OK-C 000021  
GRIEVANT: Class Action

BEFORE: I. B. Helburn

APPEARANCES:

For the Postal Service: Jeffrey Dalton

For the APWU: Tom Maier

Place of Hearing: Muskogee, OK

Date of Hearing: July 2, 1999

Award: The Postal Service violated the National Agreement when Richard Lemon was assigned as a limited duty employee in the Muskogee, OK Post Office. In the future the Postal Service shall consult with the Union in accordance with Article XIII of the parties' LMOU.

Date of Award: August 31, 1999



OKLAHOMA DISTRICT PILOT PROGRAM

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE  
Muskogee, Oklahoma

-and-

AMERICAN POSTAL WORKERS UNION  
Muskogee Area Local

OPINION AND AWARD

OF THE

ARBITRATOR

USPS No. S4C-OK-C 000021

APWU No. 96-0004

Class Action

**APPEARANCES**

**For the Postal Service:**

Jeffrey Dalton;  
Lonnie Haughey, Jr.;  
Joe Shafer;

Labor Relations Specialist  
Postmaster, Tallequa, OK  
Supervisor, Customer Service

**For the Union:**

Tom Maier;  
Paul Hooten;

National Business Agent  
Local President

**PERTINENT NATIONAL AGREEMENT PROVISIONS (JX-1)<sup>1</sup>**

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

**Section 2. Employee's Request for Reassignment**

C. Installation heads shall show the greatest consideration for full-time regular employees requiring light duty or other assignments, giving each request careful attention, and reassign such employee 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.

<sup>1</sup> JX, MX and UX refer respectively to Joint, Management and Union Exhibits. The use of \* \* \* indicates omitted language.

**PERTINENT LMOU PROVISION (JX-5)****ARTICLE XIII – ASSIGNMENT OF ILL OR  
INJURED REGULAR WORK FORCE EMPLOYEES**

Light duty assignments, when needed, will be created from work that is supplemental to regular assignments, after consultations.

Light duty assignments may or may not be eight (8) hours each day, and may or may not be forty (40) hours per week, depending on available work and restrictions placed on the individual to perform duties requiring the light duty assignment.

**PERTINENT ELM PROVISIONS (JX-3)****546.11 General**

The USPS has legal responsibilities to employees with job-related disabilities under 5 U.S.C. 8151 and the Office of Personnel Management's

**546.141 Obligation**

When an employee has partially overcome the injury or disability, the USPS has the following obligation

a. *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 546.611). 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.

(4) An employee may be assigned limited duty outside of the work facility to which the employee is normally assigned only if there is not adequate work available within the employee's work limitation tolerances at the employee's facility. In such instances, every effort must be made to assign the employee to work within the employee's craft within the employee's regular schedule and as near



as possible to the regular work facility to which the employee is normally assigned.

\* \* \*

546.21 **Compliance**

Reemployment or reassignment under this section must be in compliance with applicable collective bargaining agreements. Individuals so reemployed or reassigned must receive all appropriate rights and protection under the newly applicable collective bargaining agreement.

## **BACKGROUND**

Richard Lemon was a City Carrier assigned to the Muskogee, OK Post Office. Lemon suffered a number of on-the-job injuries and reached the point where he was unable to perform Carrier work for his entire tour, even though such work was within his restrictions. While a rest bar was used by some Carriers, according to Lonnie Haughy, then a supervisor in Muskogee, Lemon could not use a rest bar because of the configuration of his case. Word of Lemon's worsening condition was relayed to Dr. Tacca, Area Medical Director, who conferred with Lemon's personal physician. Consequently, on February 16, 1996<sup>2</sup> Lemon was assigned to work from 2:00 – 10:30 a.m. on the Clerk side, to work within his limitations. This continued until March 23, when Lemon left to have surgery on his ankle. He returned to Carrier work when he recovered from surgery.

Paul Hooten, Local President, testified that there was no prior consultation before Lemon was assigned to limited duty work on the Clerk side. Haughy was unable to say when he spoke with the Union before moving Lemon to the Clerk Craft, but was certain that he had spoken with the Union. Joe Shafer, Supervisor Customer Service, testified that he is certain that he discussed Lemon's circumstances with then Steward Ray Barnes.

On February 20 the Union grieved at Step 1, claiming that Lemon was assigned without prior consultation. After the grievance was denied, the Step 2 grievance was filed on February 23. After denials at Steps 2 and 3 the grievance was advanced to arbitration and assigned to the undersigned pilot project arbitrator. The matter was heard

in Muskogee, OK on July 2, 1999. The parties stipulated that the matter was properly before the arbitrator. Witnesses were affirmed before testifying and cross-examined. Documentary and testimonial evidence was received. The record was closed with receipt of briefs on August 16, 1999.

## **ISSUE**

As framed by the arbitrator the issue is as follows:

Did the Postal Service violate the National Agreement when Richard Lemon was assigned as a limited duty employee in the Clerk Craft in the Muskogee, OK Post Office and if so, what is the appropriate remedy?

## **UNION POSITION**

For reasons noted below, the Union argues that the assignment violated the National Agreement and thus the grievance should be sustained and the Postal Service ordered to cease and desist from such assignments without prior consultation, the Clerks to be paid for the hours lost because of Lemon's assignment and Lemon to be paid out of schedule pay for five hours for each day of the assignment.

1. The Postal Service failed to consult with the Union in accordance with the Local Memorandum of Understanding (LMOU) before making the limited duty assignment. The LMOU is a legal, binding document.

2. The "Postal Service has the same responsibility to consult with the APWU regardless of whether the employee is being called to light or limited duty" (Brief, p. 3). Arbitrator Richard Mittenthal in case no. H8N-5B-C 22251 (1983) found that the distinction between light and limited duty was "a distinction without a difference."

3. The Union acknowledges the obligation of the Postal Service to provide light/limited duty, with no obligation to notify the Union in advance. But the Union has a right to consultation as part of its right to protect the bargaining unit from adverse impact. The Service has not challenged that portion of the LMOU mandating consultation.

4. Lemon was placed in the Clerk Craft without consultation, "without any medical evidence showing the need for light/limited duty, and without any medically certified restrictions" (Brief, p. 4) rather than using modified Carrier cases as in the past.

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<sup>2</sup> Hereafter all dates are 1996 unless otherwise noted.

5. In addition to the Mittenthal award, the Union submitted four other national awards and one regional award for the arbitrator's consideration.

### **POSTAL SERVICE POSITION**

For reasons noted below, the Postal Service asserts that the National Agreement has not been violated and thus the grievance should be denied.

1. Because Lemon was on limited duty, the light duty provision of Article XIII of the Local Memorandum of Understanding (LMOU) does not apply. Therefore the Postal Service was not obligated to consult with the Union.

2. In three national awards, Arbitrator Richard Mittenthal distinguishes between limited and light duty. Additional national awards by Arbitrators Bernard Dobranski and Benjamin Aaron support the distinction between Article 13 of the National Agreement and Section 546.141 of the ELM. Because the case at bar is not an Article 13 case, the LMOU does not apply.

3. The remedy requested by the Union is improper because the Carrier is not represented by the APWU and because employees assigned to light duty under the National Agreement or the FECA are not eligible for out of schedule pay.

4. In addition to the awards mentioned above, one additional national award and two regional awards were submitted in support of Postal Service contentions.

### **DISCUSSION**

For reasons noted below, the grievance is sustained but no monetary remedy is ordered. The parties are referred to my award in case no. S4C-OK-C 000020 (1999), heard the same day as this case. In summary, that decision states that as used in Article 13 of the National Agreement, the phrase "light duty" incorporates "limited duty." Because Article XIII of the LMOU relates to Article 13 of the National Agreement, the phrase "light duty assignment" is given the same inclusive meaning and thus encompasses assignments made in accordance with Section 546.141 of the ELM. This conclusion is not altered by a careful reading of two additional national awards by Arbitrator Richard Mittenthal.

In case no. H1C-3T-C 18210 (1984) Arbitrator Mittenthal considered permanent light duty and did not touch on the broader meaning of "light duty" as the phrase is used in parts of Article 13. Case no. H1C-4K-C 17313 (1985) concerned permanent limited duty and, while distinguishing between "light duty" as used in Article 13 and "limited duty" as used in Section 546.141 of the ELM, that award did not address the Article 13 inclusion of "limited duty" in some instances when "light duty" was used.

The national awards of Arbitrator Bernard Dobranski in case numbers J90C-11-C 92056413 (1997) and G94C-4G-C 96077397 (1998) concern respectively the temporary assignment of rural carriers to limited duty in the Clerk Craft and the notification requirements of Article 7.2 where a limited duty assignment was concerned. Neither award involved consideration of the language of Article 13 and neither altered the earlier Mittenthal interpretation of that language. Arbitrator Benjamin Aaron's national award in case no. H1C-5D-C 2128 (1983) pre-dated the Mittenthal award which noted the broad use of the term "light duty" in Article 13. Even if Arbitrator Aaron had provided a competing interpretation, which he did not, the Mittenthal award would have to be considered the last word.

Therefore the National Agreement was violated when the Union was not consulted about Lemon's brief assignment to Clerk duties. Article XIII must be read to incorporate an obligation to consult on limited duty as well as light duty assignments. However, other than requiring the Postal Service to consult in the future, no remedy is ordered. The request for payment to Lemon is inappropriate as he was still in the Carrier bargaining unit and not represented by the APWU. The request to compensate Clerks for hours lost because of Lemon's assignment was not accompanied by evidence that hours of work were lost. Thus compensation would be improperly punitive rather than properly restorative.

**AWARD**

The Postal Service violated the National Agreement when Richard Lemon was assigned as a limited duty employee in the Muskogee, OK Post Office. In the future the Postal Service shall consult with the Union in accordance with Article XIII of the parties' LMOU.



I. B. Helburn, Arbitrator

Austin, Texas  
August 31, 1999

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration	(	GRIEVANT:
between	)	Class Action
UNITED STATES POSTAL SERVICE	)	POST OFFICE:
and	)	White River Jct. VT
AMERICAN POSTAL WORKERS UNION	)	CASE NUMBER:
	(	N90C-1G-C92019527

BEFORE: ARBITRATOR GEORGE R. SHEA, Jr.

APPEARANCES:

American Postal Workers Union, AFL-CIO (Union):  
W.F. Corriveau  
United States Postal Service (Service):  
D.F. Lemay

Place of Hearing: White River Junction, VT  
Date of Hearing: February 4, 1993

AWARD:

For the reasons more fully set forth in the attached Opinion, the Arbitrator determines that: the Service did violate the National Agreement, when it allowed two Limited Duty Mailhandlers to work in the Clerk Craft as Computer Forward System [CFS] unit personal at the White River Junction, VT [WRJ] from May 2, 1992 through July 11, 1992, while excessing four level 6 LSM Clerks to the Mailhandler Craft. Accordingly, the Arbitrator awards the two most senior of the excessed Clerk Craft employees restitution of any wages lost by them during the time period in question as a result of their being excessed and reassigned to Mailhandler craft positions. Additionally, the Arbitrator directs the Service to (a) determine the amount of overtime, if any, worked by the two Limited Duty Mailhandler employees during the period in question; (b) to divide the resulting overtime hours by the number of Clerk Craft employees appearing the then applicable OTDL; and (c) to compensate each Clerk Craft employee appearing on that list a per employee share of that overtime, as determined in section "b" above.

Date of Award: March 29, 1993

  
George R. Shea, Jr.

N90C-1G-C92019527

## OPINION

### STATEMENT OF PROCEEDINGS:

The Union appealed the above captioned matter to arbitration in accordance with the parties' National Agreement [Agreement]. The undersigned was designated as the Arbitrator to hear and decide the matter. The Arbitrator held a hearing on and at the above referred to date and location. The parties' representatives appeared. The Arbitrator provided the parties with a full and fair opportunity to be heard, to present evidence and argument and to examine and cross examine witnesses.

### ISSUE:

The parties agreed to the following statement of the issue before the Arbitrator:

"Did the Service violate the National Agreement, when it allowed two Limited Duty Mailhandlers to work in the Clerk Craft as Computer Forward System [CFS] unit personal at the White River Junction, VT [WRJ] from May 2, 1992 through July 11, 1992, while excessing four level 6 LSM Clerks to the Mailhandler Craft? If so what shall be the appropriate remedy?"<sup>1</sup>

### FACTS:

The parties' representatives entered into the following statements of stipulated facts.

1. During the month of April 1992, the Service at WRJ designated eight Level 6 LSM Clerks to be excessed.
2. On or about May 2, 1992, four of the excessed clerks went to Level 4 Mailhandler positions at WRJ.(J-#2, pp. 10-13)
3. On or about May 2, 1992, there were two persons in the Mailhandler Craft working Limited Duty assignments consisting of Clerk Craft work in the CFS unit at WRJ. CFS Clerk Craft positions are Level 4 positions.(J-#2, p.14)
4. On or about July 7, 1992, the two Mailhandlers assigned the previously described CFS Limited Duty assignments were

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<sup>1</sup> The Union agreed to the issue contingent on the Arbitrator noting that the Union feels that the only appropriate remedy, if a violation is found, is the one cited by the Union on the Step 2 appeal form.(J-#2, p.9)

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notified that they would returned to Mailhandler positions.(J-#4) The employees actually returned to Mailhandler positions on July 11, 1992.(J-#4)

5. The Mailhandlers in Limited Duty assignments in the CFS unit did not perform all the duties of a CFS clerk during the period in question.

**POSITION OF PARTIES:**

**American Postal Workers Union, AFL-CIO [Union]:**

The Union contested the excessing at issue in this matter by filing a written grievance dated May 26, 1992. The grievance stated the following:

"On May 2, 1992 four clerk craft employees were reassigned to the mailhandler craft... At this time and to this current date 2 mailhandler craft employees are assigned on limited duty to the clerk craft. A letter dated June 11, 1990 from Joseph Mahon Assistant postmaster General to William Burrus V.P. APWU states that the other employees assigned to the craft undergoing excessing would have to be returned to their respective crafts."(J-#2, p.9)

At the hearing before the Arbitrator, the Union argued that the contested excessing violated the Agreement because it; (a) reduced the number of Clerk Craft employees below the needs of the impacted section or installation; (b) failed to minimize the dislocation and inconvenience of the impacted full-time Clerk Craft employees and; (c) failed to reassign the impacted employees within their craft, as required by Article 12 of the Agreement. Specifically, the Union argued the Service violated Article 12 of the Agreement, when it exceeded four employees from Clerk Craft positions and reassigned them to the Mailhandler Craft positions, while retaining two Mailhandler employees in Limited Duty assignments, consisting of Clerk Craft work in the CFS unit at WRJ. Regarding the Service's responsive contentions, the Union asserted that the Service could have met its perceived contractual and legal obligations to provide Limited Duty assignments to the Mailhandler employees by assigning the employees to work, which existed within their own craft, was available during the period in question and was within their medical restrictions. Accordingly, the Union requested the Arbitrator sustain the grievance, return two of the reassigned Clerks to work in the Clerk Craft and "pay 80 hours/week overtime to be split among those Clerk Craft employees on the OTDL for the hours worked in the Clerk Craft by those Limited Duty Mailhandlers from May 2, 1992 until they are removed from the Craft."(J-#2, p.9)

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United States Postal Service [Service]:

The Service maintained that its actions in this matter did not violate the parties' Agreement and were consistent with its contractual and legal obligations to the impacted Clerk and Mailhandler craft employees. The Service distinguished this matter from the circumstances addressed in the Mahon/Burrus letter dated June 11, 1990. Accordingly, the Service asserted that the Union's reliance upon that letter in this matter is misplaced. (J-#2, pp.15-16) Consequently, the Service requested the grievance be denied. Finally, the Service maintained that the Union's requested remedy is not compensatory, but punitive, in nature and should be denied, even if, the Arbitrator sustained the grievance.

At the hearing before the Arbitrator, the Service responded to the Union's contentions by asserting the following. Firstly, the Service argued that evidence relied upon by the Union, the existence of two Limited Duty assignments during the period in question, did not support the its contention that Clerk Craft work existed at the time of the excessing which could have been assigned to Clerks, thus avoiding some of the contested excessing. Secondly, it contended that the excessed employees were not qualified to performed the work of the Limited Duty assignments. Thirdly, the Service argued that the work performed by the Mailhandlers was not available to the Clerk Craft employees, in that, the work did not constitute a position within the Clerk Craft and that the Service was required by the Article 13 of the Agreement, the Employees and Labor Relations Manual [ELM], section 546.14, and the Federal Employees Compensation to provided the work to the Mailhandlers in question. Finally, the Service characterized the Union's arguments, as they related to contractual appropriateness of the Limited Duty assignment, a "new argument", not raised during the processing of the grievance, and, therefore, not one properly raised in arbitration.

**DISCUSSION:**

- 1. THE PARTIES CONTENTIONS REGARDING THE TIMELINESS OF THE UNION'S ARGUMENTS CONCERNING THE APPROPRIATENESS OF THE MAILHANDLERS' LIMITED DUTY ASSIGNMENT.**

Based upon his complete review of the arguments raised by the parties during their processing of the underlying grievance in this matter and his comparison of these arguments to those raised by parties at the hearing, the Arbitrator determines that the Union's evidentiary and contractual contentions at the hearing were consistent with the issues raised and discussed by the parties during the grievance processing. The Arbitrator further finds that the evidence sought by the Union regarding the Limited Duty Mailhandlers' medical limitations was sought by the Union to

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evaluate the affirmative defenses raised by the Service in this matter and, therefore, not related to a new argument, as asserted by the Service.

2. THE PARTIES' CONTENTIONS REGARDING THE APPLICABILITY OF THE MAHON/BURRUS LETTER, DATED JUNE 11, 1990, TO THE CIRCUMSTANCES OF THIS MATTER.

The letter in question was authored by Joseph J. Mahon, Jr., Assistant Postmaster General and sent by him to William Burrus, Executive Vice President of the APWU. (J-#2, pp.15-16) The letter, in parts relevant to this matter, states the following:

"In the case of other craft employees who are temporarily assigned to the craft undergoing the excessing, they would have to be returned to their respective crafts. This in accordance with the provisions of Article 13, Section 4.C. which reads:"

"The reassignment of a full-time regular or part-time flexible employee to a temporary or permanent light duty or other assignment shall not be made to the detriment of any full-time regular on a scheduled assignment ..."

While the terms Limited Duty and Light Duty are subject to some differing application by the parties, the Arbitrator observes that the terms are generally applied in the following manner. The term "Light Duty" describes assignments given to employees who are incapable of performing the duties of their regular position because of partial incapacity resulting from a non-work-related injury or illness. The term "Limited Duty" is used to describe assignments given to employees who are incapable of performing the duties of their regular position because of partial incapacity resulting from a work-related injury or illness. Both Light Duty and Limited Duty assignments must be within the medically defined limitations and capabilities of the assigned employee.

The Union contended that the letter expresses the Service's interpretation of Article 12 of the Agreement which requires the Service to return to their craft all non-craft employees temporarily assigned to work of a craft experiencing an excessing prior to implementing a decision to excess employees from that impacted craft. Relying on the distinction between Limited and Light Duty assignments and its reading of the specific language of section 13.4.C. of the Agreement, the Service argued that the Mahon/Burrus letter is founded on the application of section 13.4.C., which relates only to Light Duty assignments and consequently does not apply to the circumstances of this matter, which involves Limited Duty assignments.

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The Arbitrator observes that Article 13 of the Agreement addresses both Light Duty and other assignments and circumstances involving employees' medical limitations resulting from work related injury and illness. Similarly, section 13.4.C. quoted in the Mahon/Burrus letter also refers to Light duty and "other assignments". However, the Arbitrator determines that, for the reasons specifically set forth subsequently, a proper disposition of this matter does not require the resolution of the issues raised by the parties' differing contentions regarding the Mahon/Burrus letter.

3. THE PARTIES' CONTENTIONS CONCERNING THE SERVICE'S ASSERTION THAT IT WAS REQUIRED, BY LAW OR CONTRACT, TO PROVIDE CFS CLERK WORK AS A LIMITED DUTY ASSIGNMENT TO THE MAILHANDLERS, THUS MAKING IT UNAVAILABLE TO THE EXCESSED EMPLOYEES

Referring to Limited Duty assignments, section 546.141(a)(2) states the following:

"If adequate duties are not available within the employee's work limitation tolerances in the craft and work facility to which the employee is regularly assigned within the employee's regular hours of duty other work may be assigned within that facility."

The two Mailhandlers, who were working in the CFS unit at the time of the contested excessing, were working there pursuant to a Limited Duty assignment. The Union argued that work performed within the Limited Duty assignment could have been performed by Clerk Craft employees. The Union further argued that, if the Service had assigned that work to the excessed employees, it could have avoided the contested excessing.

The Service contended that it was required by operation of law and contract, to provide the Mailhandler employees a Limited Duty assignment and by necessity a Limited Duty assignment in the CFS unit and not in their own craft. Specifically, the Service argued that (a) the work performed by the Mailhandler employees pursuant to their Limited Duty assignment did not constitute a "position" and, consequently, could not have been assigned to the excessed employees to avoid the contested action; and (b) the excessed employees did not possess the needed skills to perform the work of the CFS Limited Duty assignments.

Based on his review of the Service's argument and the conditional nature of section 546.14 of the ELM, the Arbitrator determines these contentions to be an affirmative defense to the Union's claims in this matter and, therefore, one for which the Service must bear both the burdens of proof and persuasion. For the reasons more fully set forth, the Arbitrator is not persuaded that the Service met either of these burdens.

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In the opinion of the Arbitrator, the Service reliance on the first of its contentions, as a defense to the Union's assertions is misplaced, in that, the Service's position fails to take into the consideration (a) the distinction between the existence of "work" and "position"; and (b) the provisions of section 7.2.B. Consequently, the Arbitrator determines that the Service's position inappropriately limits the Service's obligations under section 12.5.B. to situations where established positions are available to minimize the impact of excessing on employees. In addition, the Arbitrator is not persuaded that the Service's has established the evidentiary underpinnings of the second element of its contentions on this issue. The record supports a finding that the Clerk Craft employees possessed the skills needed to perform the Clerk Craft work performed by the Mailhandler employees during their Limited Duty assignment in the CFS unit.

The Mailhandler craft and the Service had identified work/positions for use as Light Duty assignments for use by the members of that craft.(U-#4) The Mailhandlers were provided with Limited Duty assignments, upon their return to their craft. The evidentiary record does not contain sufficient evidence to support a finding that the Mailhandler employees on Limited Duty assignments in the CFS unit experienced an improvement of their medical conditions, or a decrease in their medical restrictions between May 1, 1992, the day before the excessing, and July 11, 1992, the date on which they were returned to their craft. The record does not support a finding that the work provided to the returning Mailhandlers was work newly available in their craft on July 11, 1992. Accordingly, the Arbitrator determines that the Service has not established that the requisite conditions of ELM section 546.141 existed at the time of its assignment of the two Mailhandlers to the Limited Duty assignment in the CFS unit or at the time of the contested excessing. Based on the reasoning and findings set forth in this Opinion, the Arbitrator makes the attached Award sustaining the grievance.

**4. THE PARTIES' CONTENTIONS REGARDING THE APPROPRIATENESS OF THE REMEDY REQUESTED BY THE UNION IN THIS MATTER.**

It is axiomatic that Arbitrators' awards should be remedial regarding the established contract violation and compensatory regarding the proven harm incurred by the grievant(s) because of the found contract violation. The record indicates that the excessed employees' current assignment status makes the Union's request for their return to the Clerk Craft unit unnecessary. In the Arbitrator's opinion, the Union's requested monetary remedy, in the circumstances of this matter, is not compensatory in nature and consequently, is denied. The Arbitrator determines that the attached Award is a more appropriate remedy under these standards.

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Mr. Cliff Guffey  
Assistant Director, Clerk Craft Division  
American Postal Workers Union, AFL-CIO  
1300 L Street NW  
Washington, DC 20005-4128

Re: I90C-4I-C 93046587  
Meester, M.  
Fargo, ND 58102-9994

Dear Mr. Guffey:

I recently met with you in prearbitration discussion of Case No. I90C-4I-C 93046587. The issue in this grievance is whether or not the grievant was improperly by-passed for conversion to full-time status.

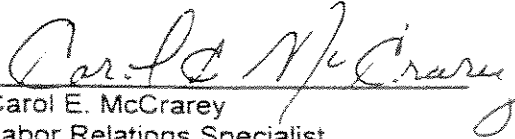
The parties mutually agree that former employees who are re-employed when they have partially or fully overcome job-related injuries or disabilities are entitled to conversion from part-time to full-time status in accordance with the National Agreement.

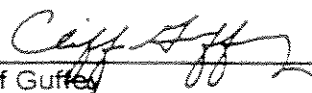
A PTF rehab employee should not be denied the opportunity to convert to full-time based solely on the fact that they have permanent restrictions. The decision to convert should depend on whether or not the employee is physically capable of performing the duties of the vacant duty assignment, the ability to modify the assignment to accommodate the employee's limitations while maintaining the essential or core duties of the position and compliance with OWCP guidelines. As this will constitute a new job offer, the employee and the treating physician must sign off accepting the job offer and OWCP notified. These considerations are in accordance with the National Agreement under Article 37.5 Conversion/Part-time Flexible Preference and Article 19 incorporating Elm Section 546.

The parties further agreed to remand this case to the regional level for rediscussion and resolution only on the question of what remedy grievant Meester may be entitled to, if any. This action does not prejudice the position of either party concerning procedural arguments which may be raised.

Please sign and return the enclosed copy of this letter as your acknowledgment of agreement to remand this case on the remedy question alone withdrawing Case No. I90C-4I-C 93046587 from the pending national arbitration listing.

Sincerely,

  
Carol E. McCrarey  
Labor Relations Specialist  
Grievance and Arbitration

  
Cliff Guffey  
Assistant Director, Clerk Craft Division  
American Postal Workers Union,  
AFL-CIO

Date: 9-10-98

