

APWU

Q00C-4Q-C 06190216

American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Initiate National Dispute

VIA FACSIMILE AND REGULAR MAIL

August 7, 2006



Greg Bell, Director
Industrial Relations
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Northwest Region

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Southern Region

Omar M. Gonzalez
Western Region

Mr. Doug Tulino
Vice President, Labor Relations
U.S. Postal Service, Room 9014
475 L'Enfant Plaza
Washington, D.C. 20260

Re: APWU No. HQTG200610, Utilization of Casuals to Fill
Vacancies Withheld Pursuant to Article 12

Dear Mr. Tulino:

In accordance with the provisions of Article 15, Sections 2 and 4, of the National Agreement, the APWU is initiating a Step 4 dispute over the Employer's obligation pursuant to Article 12 to minimize to the extent possible the impact of excessing on full-time and part-time flexible (regular work force) employees by separation of all casuals, and the Postal Service's decision to utilize casual employees in lieu of regular work force employees to fill withheld duty assignments under Article 12.

The Postal Service has recently taken the position that instead of separating all casual employees as required in accordance with Article 12, it can retain and utilize casual employees in lieu of regular work force employees to fill withheld duty assignments under Article 12. The Postal Service takes the position that this is consistent with Arbitrator Das's award in Case #Q98C-4Q-C 00100499. The APWU disagrees.

In sustaining the APWU grievance in Case #Q98C-4Q-C 00100499, Arbitrator Das ruled that Article 7.1.B.1 of the National Agreement establishes a separate restriction on the employment of casual employees, in addition to the other restrictions set forth in other paragraphs of Article 7.1.B. He rejected the Postal Service's assertion that Article 7.1.B.1 does not restrict the Postal Service from employing and using casual employees for whatever function it chooses for as long as it chooses, provided the casual cap limitations and the two 90-day plus Christmas period term restrictions are not exceeded.

Step 4 - Direct Appeal

K. Rachel
A. Johnson
J. Dockins
M. Hercules (with case file)

Copy to: Union, Binder



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Arbitrator Das also rejected the following alternative interpretation that the Postal Service asserted:

That alternative would recognize that the Postal Service may employ and use casuals, consistent with cap and term requirements, whenever it has an operational need which it reasonably believes cannot be filled with career employees, whenever that need is of a long or short term duration, or is for routine or complex work. Such employment would not be "in lieu of" employment of regular workforce employees; such use would be "supplemental." The Unions, as always, would have the burden of proof in any such contract interpretation arbitration.

Arbitrator Das also ruled that the Postal Service may only employ (hire) casual employees to be utilized as a limited term supplemental work force and not in lieu of (instead of, in place of, or in substitution of) career employees. In addition, the arbitrator concluded that a memo by the Postal Service, which the parties cited in numerous Step 4 settlements, amounted to a "jointly endorsed understanding" regarding the circumstances under which it is appropriate to employ (hire) casual employees to be utilized as a limited term supplemental work force consistent with Article 7.1.B1. Citing this memo, he ruled:

"Generally, casuals are utilized in circumstances such as heavy workload or leave periods; to accommodate any temporary or intermittent service conditions; or in other circumstances where supplemental workforce needs occur. Where the identified need and workload is for other than supplemental employment, the use of career employees is appropriate."

Arbitrator Das did not address the limitations or restrictions placed on the employment, separations or utilization of casual employees (nor were such issues before him) as they apply to other provisions of the collective bargaining agreement. However, Arbitrator Das as previously stated, did conclude that there existed a "jointly endorsed understanding" regarding the circumstances under which it is appropriate to employ casual employees to be utilized as a limited term supplemental work force.

Contrary to Postal Service assertions, Arbitrator Das did not impose any circumstances other than those that the record established was a "jointly endorsed understanding." It is the APWU's position that the historical application of the parties' "jointly endorsed understanding" represents the intent and interpretation of the parties' collective bargaining agreement regarding the circumstances under which it is appropriate to employ casual employees to be utilized as a limited term supplemental work force.

It is also the Union's position that the Postal Service's action violates the principles and requirements of Article 12 and Article 7 of the National Agreement. The Union contends that the Postal Service's actions represent a blatant violation of the parties' collective bargaining agreement and disregard for its regular work force employees and its

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obligation to keep dislocation and inconvenience to regular work force employees to a minimum.

Moreover, it is the APWU's position that the Postal Service's action may result in irreparable harm to the Union and/or affected regular work force employees who in many cases are reassigned from full-time to part-time status; reassigned outside of their craft into non-APWU bargaining units; and/or reassigned outside of their installation and forced to relocate to another city or state.

It is the APWU's position that pursuant to Article 12, in effecting reassignment (excessing), dislocation and inconvenience to employees in the regular work force (full-time and part-time flexible employees) must be kept to a minimum. Moreover, pursuant to Article 12, before excessing outside the craft or installation, management must to the extent possible minimize the impact on regular work force (full-time and part-time) employees by separation of all casuals.

Consistent with the historical application of the use of casual employees, and with the intent of the parties, as well as past practice and national-level settlements, casual employees are not utilized in lieu of full-time and part-time flexible employees to cover withheld duty assignments under Article 12 of the collective bargaining agreement. To the contrary, Article 12 requires casual employees to be separated (to be the first to go) *to the extent possible* when for any reason an installation must reduce the number of employees more rapidly than is possible by normal attrition.

In addition, consistent with the historical application of Article 12, withheld duty assignments have always been filled by part-time flexible employees and/or full-time flexible or unassigned regular employees, with the exception of the period from 1990 thru 2005. In 1990, the Postal Service was successful in the interest arbitration for the 1990 National Agreement in getting Article 7 amended to include a "Transitional Work Force." Transitional employees are hired for a term not to exceed 360 calendar days with a break in service of at least 5 days between appointments. Specifically, Article 7 provided that (Non-REC) transitional employees were to be used to fill withheld duty assignments under Article 12. Transitional employees were also used to replace part-time attrition (reduction in the career employee complement for any reason). However, prior to assigning a transitional employee to an impacted vacant duty assignment, the collective agreement provided full-time career employees who are potentially impacted the right to opt for the vacant assignment. In addition, prior to assigning transitional employees to withheld duty assignments, the Postal Service had to assign the senior qualified part-time flexible employee to cover the withheld duty assignment.

However, in the interest arbitration for the 2000 National Agreement, the APWU was successful in achieving the elimination of Non-REC sites transitional employees effective December 31, 2005.

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Article 15 of the collective bargaining agreement provides that within thirty (30) days after the initiation of a dispute the parties shall meet in an effort to define the precise issues involved, develop all necessary facts and reach agreement. It is requested that you or your designee contact my office to discuss this dispute at a mutual agreed upon time and date.

Sincerely,


Greg Bell, Director
Industrial Relations

APWU #: HQTG200610

Dispute Date: 8/7/2006

cc: Resident Officers
File

Case Officer: Greg Bell

Contract Article(s): 12, Principles of
Reassignments; Separation of Casuals Prior
to Excessing of Regular Employees In Craft;

Confirmation Report - Memory Send

Page : 001
Date & Time: 08-07-06 03:58pm
Line 1 :
Machine ID :

Job number : 175
Date : 08-07 03:57pm
To : 92683074
Number of pages : 005
Start time : 08-07 03:57pm
End time : 08-07 03:58pm
Pages sent : 005
Status : OK

Job number : 175

*** SEND SUCCESSFUL ***



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

Initiate National Dispute

VIA FACSIMILE AND REGULAR MAIL

August 7, 2006

Mr. Doug Tulino
Vice President, Labor Relations
U.S. Postal Service, Room 9014
475 L'Enfant Plaza
Washington, D.C. 20260

Re: APWU No. HQTG200610, Utilization of Casuals to Fill
Vacancies Withheld Pursuant to Article 12

Dear Mr. Tulino:

In accordance with the provisions of Article 15, Sections 2 and 4, of the National Agreement, the APWU is initiating a Step 4 dispute over the Employer's obligation pursuant to Article 12 to minimize to the extent possible the impact of excessing on full-time and part-time flexible (regular work force) employees by separation of all casuals, and the Postal Service's decision to utilize casual employees in lieu of regular work force employees to fill withheld duty assignments under Article 12.

The Postal Service has recently taken the position that instead of separating all casual employees as required in accordance with Article 12, it can retain and utilize casual employees in lieu of regular work force employees to fill withheld duty assignments under Article 12. The Postal Service takes the position that this is consistent with Arbitrator Das's award in Case #Q98C-4Q-C 00100499. The APWU disagrees.

In sustaining the APWU grievance in Case #Q98C-4Q-C 00100499, Arbitrator Das ruled that Article 7.1.B.1 of the National Agreement establishes a separate restriction on the employment of casual employees, in addition to the other restrictions set forth in other paragraphs of Article 7.1.B. He rejected the Postal Service's assertion that Article 7.1.B.1 does not restrict the Postal Service from employing and using casual employees for whatever function it chooses for as long as it chooses, provided the casual cap limitations and the two 90-day plus Christmas period term restrictions are not exceeded.

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American Postal Workers Union, AFL-CIO

Greg Bell, Director
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FAX COVER SHEET

Date: August 7, 2006 Time: 3:58 PM

To: Doug Tulino, Vice President, Labor Relations
USPS

Recipient's Fax Number: 202.268.3074

From: Greg Bell, Director Fax Number: (202) 371-0992

Number of Pages Transmitted (Including Cover Page): 5

COMMENTS:

**RE: USPS Initiate National Dispute HQTG200610 Utilization of Casual to Fill
Vacancies Withheld Pursuant to Article 12.**

If you have any questions or concerns, please call.

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American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

To: Local and State Presidents
National Business Agents
National Advocates
Regional Coordinators
Resident Officers

From: Greg Bell, Director 
Industrial Relations

Date: August 7, 2006

Re: Improper Employment of Casual Employees to be Utilized to Fill Withheld Duty
Assignment under Article 12

Enclosed you will find a copy of a Step 4 dispute that the APWU initiated over the Employer's obligation pursuant to Article 12 to minimize to the extent possible the impact of excessing on full-time and part-time flexible (regular work force) employees by the separation of all casuals, and the Postal Service's decision to utilize casual employees in lieu of regular work force employees to fill withheld duty assignments under Article 12. The APWU's position is provided in more detail in the Step 4 dispute.

It is my understanding that, in some areas, the Postal Service has provided some type of guidance or instructions to their managers concerning the employment and utilization of casual employees, citing specific circumstances in which casual employees can be employed and utilized. For example, the Postal Service has recently taken the position that instead of separating all casual employees as required in accordance with Article 12, it can now retain and utilize casual employees in lieu of regular work force employees to fill withheld duty assignments under Article 12. The Postal Service takes the position that this is consistent with the award of Arbitrator Das in case # Q98C-4Q-C 00100499. The APWU disagrees.

Contrary to Postal Service assertions, Arbitrator Das did not impose any circumstances other than those that the record established were part of a "jointly endorsed understanding." It is the APWU's position that the historical application of the parties' "jointly endorsed understanding" represents the intent and interpretation of the parties' collective bargaining agreement regarding the circumstances under which it is appropriate to employ casual employees to be utilized as a limited term, supplemental work force.

It is the APWU's position that, consistent with the historical application of the use of casual employees and with the intent of the parties as well as past practice and national-level

settlements, casual employees are not utilized in lieu of full-time and part-time flexible employees to cover withheld duty assignments under Article 12 of the collective bargaining agreement. To the contrary, Article 12 requires casual employees to be separated (to be the first to go) *to the extent possible* when, for any reason, an installation must reduce the number of employees more rapidly than is possible by normal attrition.

In those installations where casual employees are being employed and/or utilized to fill withheld duty assignment under Article 12, such action should be grieved. Where appropriate, the requested remedy should include the following:

- That those employees who were reassigned from their full-time position to part-time flexible status should be restored to full-time position and made whole, including out-of-schedule and applicable overtime pay.
- That those employees who were reassigned outside of their craft be restored to their craft position and made whole, including out-of-schedule and applicable overtime pay.
- That those employees who were reassigned outside of the installation be restored to their full-time position at their former installation and made whole, including out-of-schedule and applicable overtime pay, and related relocation costs, leave, expenses etc.
- That all casual employees at the installation should be separated and that management cease and desist from employing casual employees in lieu of regular work force (full-time and part-time) employees to fill withheld duty assignments under Article 12.
- That craft bargaining unit employees receive payment equal to the hours worked by casual employees, including at the applicable overtime rate.
- That the local union be compensated for lost revenue and costs incurred/associated with processing this grievance.

In addition, all relevant information should be requested *including* the casual hiring notification process, casual hiring tracking process, and supporting documentation for continued justification of the hiring and utilization of such casual employees.

Please be advised that I am presently reviewing other assertions that the Postal Service may be making concerning circumstances in which casual employees may be employed and/or utilized since the Das award. As more information becomes available, I will keep you informed.

Enclosure

GB/LB:jm
OPEIU#2
AFL-CIO