

# American Postal Workers Union, AFL-CIO

## GRIEVANCE STATUS LETTER (CENTRAL REGION) APWU-USPS NAT. GRIEVANCE

GRIEVANT PERSON OR UNION FROM LINE B (LASTNAMEFIRST)  
BACKSTROM, T.

USPS REGIONAL GRIEVANCE  
194C-11-C97102156

WORK LOCATION CITY AND ZIP CODE FROM LINE 10  
DES MOINES, IA.

APWU REGIONAL GRIEVANCE  
15017

CONTRACT ISSUE  
ARTICLE 10 - AL

CRAFT  
CLERK

DATE  
September 3, 1998

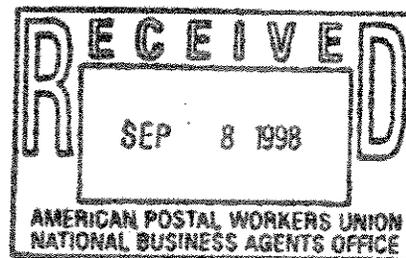
APWU LOCAL GRIEVANCE  
77-97-12736

TO: DIRECTOR, INDUSTRIAL RELATIONS  
AMERICAN POSTAL WORKERS UNION, AFL-CIO  
1300 L STREET, N.W.  
WASHINGTON, D.C. 20005

D/A: 8/27/98 EXP  
SUSTAINED  
ADVOCATE:  
Bruce Clark

- WITHDRAW FROM STEP 4 OR ARBITRATION
- SETTLEMENT
- ARBITRATION AWARD
  - NATL. CERTIFICATION
  - LOCAL CERTIFICATION

PYMT. # 505579



Arbitrator's Statement -- Sharon Imes  
\$560.24-- D/H: August 18, 1998

**ATTACHED IS DOCUMENTATION IN SUPPORT OF ACTION INDICATED**

The Arbitrator stated, "The grievance is sustained. Although the Union seeks a monetary remedy in the event the Service was found to have violated the agreements, there is no evidence the Service has regularly failed to follow this provision of the agreement, therefore, it would be inappropriate to consider any remedy other than to advise the Service it is in violation of the National Agreement and the Local Memorandum of Understanding and that it should cease and desist in this violation."

cc: NBA, St. Louis Division Office, APWU  
President, Des Moines Local# (0044), APWU

LFP:lnf

LEO F. PERSAILS, COORDINATOR  
CENTRAL REGION  
AMERICAN POSTAL WORKERS UNION,  
AFL-CIO

**MIDWEST EXPEDITED ARBITRATION PANEL**

In the Matter of Arbitration  
Between

**UNITED STATES POSTAL SERVICE**

and

**AMERICAN POSTAL WORKERS UNION  
MAINTENANCE CRAFT, AFL-CIO**

**Grievant: T. Backstrom**

**Post Office: Des Moines, IA**

**Case No: I94C - 11 - C 97102156**

**BEFORE:** Sharon K. Innes

**APPEARANCES:**

**For the Service:** Stephen J. Thalken, Labor Relations Specialist, Hawkeye District, United States Postal Service, Des Moines, Iowa.

**For the Union:** Bruce Clark, President, Iowa Postal Workers Union, American Postal Workers Union, AFL-CIO.

**PLACE OF HEARING:** Des Moines, IA

**DATE OF HEARING:** August 18, 1998

**DATE OF AWARD:** August 27, 1998

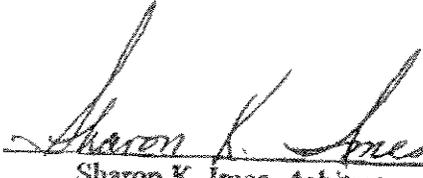
**RELEVANT CONTRACT PROVISIONS:** Articles 10, 11, 15 and 30 of the National Agreement; Items 9 and 10 of the Local Memorandum of Understanding

**CONTRACT YEAR:** November 21, 1994 - November 20, 1998

**TYPE OF GRIEVANCE:** Non-interpretative

**AWARD SUMMARY:** The language in Item 9 of the LMOU, clearly states the parties intend employees to be granted choice vacation time based upon seniority and that requests made prior to March 15 take precedence when the maximum number allowed leave as established by the percentage agreed upon the parties has not been met. Accordingly, the Service violated Items 9 and 10 of the LMOU when it failed to reconsider the Grievant's denied request for leave on May 24 and 25, 1997, since the maximum number off on those days was less than the number

established by the percentage. Accordingly, the Service is ordered to cease and desist in its violation of these agreements.

By: 

Sharon K. Imes, Arbitrator

**THE ISSUE:**

Did the Service violate Articles 10, 11 and 30 of the National Agreement and Item 10 of the Local Memorandum of Understanding when it denied the Grievant leave on May 24 and May 25, 1997? If so, what is the appropriate remedy?

**STATEMENT OF THE CASE:**

On March 15, 1997, the Grievant, a flat sorter machine operator in the Service's Des Moines, Iowa facilities, applied for leave on May 24 and 25, 1997. On March 18, the request was denied by the supervisor who gave maximum number off as the reason for the denial. On April 11, 1997, another employee requested leave for May 24, 1997 and the request was approved that same day. On that same date, according to the Grievant, she resubmitted her request for leave on May 24 and 25, 1997, and it was again denied. Even though the date the Grievant states she resubmitted her request is challenged by the Service, the Service agrees the request was submitted no later than May 11, 1997. On May 21, 1997, a grievance was filed alleging the Service had violated the National Agreement and the Local Memorandum of Understanding when it denied this leave to the Grievant. It is this matter which is before the arbitrator.

**RELEVANT CONTRACT PROVISIONS:**

Articles 10, 11, 15 and 30 of the National Agreement; Items 9 and 10 of the Local Memorandum of Understanding

**POSITIONS OF THE PARTIES:**

The Union asserts Articles 10 and 11 of the National Agreement; Item 10 of the Local Memorandum of Understanding, and the Annual Leave Selections Policy dated April 18, 1988, were violated by the Service when it failed to ask the Grievant if she wanted May 24 and 25,

1997, off after a leave opening occurred since she had initially requested the time by March 15 and since the employee granted one of the days requested that date after March 15. The Union declares not only is the Service's action a violation of clear contract language but that it is contrary to the practice of granting an employee a request denied during prime time when an opening occurs and the percentage has not been met, a practice which has existed since 1988 in this installation. As a remedy it seeks not only that the grievance be sustained but that the Grievant be awarded fifty percent additional pay for each hour worked on May 24 and May 25.

The Service maintains, however, that no contract violation occurred since there is nothing in either agreement which requires it to reconsider prior requests for prime time annual leave. It adds, further, that there is no evidence that the practice asserted by the Union exists. Continuing, it declares it properly granted the other employee the leave requested since the Grievant's request was made after April 11; was treated as incidental leave and was denied based on the needs of the service. Finally, the Service urges that even if a violation is found, the remedy sought by the Union is inappropriate and should not be granted.

#### ***DISCUSSION:***

In Joint Exhibit 2, the grievance chain, the violation alleged at Step 1 of the grievance process was that the Grievant's denial for time off requested prior to March 15 was not reconsidered when an employee left the section and left an opening in the prime time percentage; that another employee who, on April 11, 1997, submitted a request for leave on one of the two days denied the Grievant was granted that leave, and that the Grievant was still denied leave on May 25, 1997, even though the prime time percentage was not met. In Steps 1, 2 and 3 of the grievance procedure, the Service took the position that there are no contractual provisions that require management to reconsider prior requests for prime time annual leave, when a person bids out of the section.

During the hearing, because there was evidence the Grievant resubmitted her request, the Service charged the Grievant could not have possibly resubmitted a request for leave on those two days within the five calendar days required for a resubmitted request to have priority over incidental leave requests and asserts, therefore, her request was properly treated as a request for incidental leave. Based upon evidence in the record, it became apparent that even though the Grievant maintains she had re-submitted her request for the two days on April 11, 1997, it was

more than likely that it was not resubmitted until May 11, 1997. This conclusion is based upon the fact that the opening in the prime time percentage could not have occurred until after April 30<sup>th</sup>, the closing date on the bid, which caused an employee to leave the section. This conclusion is further supported by the fact that the Grievant failed to date the Form 3971 that she resubmitted and that the supervisor who received the notice dated it May 11, 1997. Consequently, if the only question before the arbitrator were whether the Service violated the National Agreement and/or the Local Memorandum of Understanding when it granted another employee incidental leave or the Grievant's request for incidental leave, the answer would be in the negative. That is not the question, however, since the five day requirement cited refers to incidents where an employee has been told part of the leave requested is available but not all of it. In this dispute, the Grievant was not advised that any part of the leave she requested was available.

The issue in this dispute is, as the Union has asserted, whether management must reconsider requests for choice vacation made prior to March 15 and denied when, later, the maximum number of employees allowed off on one of those denied days is less than the number set by the percentage. After reviewing the record, it is concluded that Items 9 and 10 of the LMOU do require management to do so, even though the Service takes the position that there is nothing in either the National Agreement or the LMOU which requires it to revisit such requests.<sup>1</sup>

Item 9 in the LMOU addresses the maximum number of employees who shall receive leave each week during the choice vacation period. The language in this provision clearly states the parties intend employees to be granted choice vacation time based upon seniority and that requests made prior to March 15 take precedence when the maximum number allowed leave as established by the percentage agreed upon the parties has not been met. Paragraph A establishes

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<sup>1</sup> As support for its position, the Service submitted a number of arbitration decisions. A review of those decisions, however, indicates none specifically deal with the issue in dispute at this facility since all of them address language contained in other LMOUs and the language contained in those LMOUs is not the same as that contained in this one. One dealt with the Service's obligation under a LMOU with regard to incidental leave; another concluded the LMOU which allowed employees additional choices to time off based upon seniority when all employees have received entitlements was in conflict with the National Agreement and that the National Agreement took precedence since the language in the LMOU was not mandatory; the third concluded that neither the National Agreement or the LMOU required that employees must be granted more than three weeks vacation during prime time, and the fourth

the percentages for determining the maximum number of employees who shall be granted applied for leave each week. Paragraph B sets the maximum number of employees who shall receive leave each week based upon the percentages, and paragraph C states the formula set forth in the previous two paragraphs shall apply to "those employees who have submitted choice vacation period leave requests on or before March 15 of the current leave year." The word "shall" in paragraph A and C requires the Service to grant requests for choice vacation period made by employees before March 15 up to the maximum number of employees allowed off as determined by the percentage agreed upon by the parties. This means that when that number has not been met, even though it is because an employee who had been granted a day of leave may leave the section, or even simply return the day to management, management has the obligation to offer the available day to employees who had requested the day prior to March 15 and been denied that day because the percentage had been met.<sup>2</sup>

Based upon the above conclusion, it must also be concluded that the Service did violate Items 9 and 10 of the LMOU when it did not offer the Grievant May 24 and 25 once the number allowed off became less than that established by the percentage. Further, the fact that one of the days was offered to another employee who had applied for one of the days off as incidental leave only exacerbates the violation since management is required under these two Items to offer the days whether or not there has been a request for incidental leave.

Consequently, based upon the parties' arguments, the evidence and the above discussion, the following award is issued:

**AWARD:**

The grievance is sustained. Although the Union seeks a monetary remedy in the event the Service was found to have violated the agreements, there is no evidence the Service has regularly failed to follow this provision of the agreement, therefore, it would be inappropriate to

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concluded that the LMOU allowed only two choices not to exceed the limits set by the National Agreement during the choice period and that all other leave beyond that must be considered incidental leave.

<sup>2</sup> This finding is further supported by the practice which exists between the parties as is exemplified in the file memorandum dated April 28, 1988, which states "If the percentage is not filled by first and second vacation choices, annual leave will be approved for those who have submitted requests prior to March 15, by seniority, up to the appropriate percentage." While this sentence does not specifically address what may happen when the number allowed off becomes less than the percentage later than March 15, it, together with the resubmission policy, establishes that it is the parties' intent to allow employees who apply for choice vacation prior to March 15 to be able to have first choice regarding leave during choice vacation periods.

consider any remedy other than to advise the Service it is in violation of the National Agreement and the Local Memorandum of Understanding and that it should cease and desist in this violation.

July 8, 1997

SKI:ms