

REGIONAL ARBITRATION PANEL 32

In the Matter of Arbitration  
Between

UNITED STATES POSTAL SERVICE

and

NATIONAL POSTAL MAIL HANDLERS  
UNION

Post Office: Des Moines, IA

Grievant: Class Action

Case No: I98M-11-C 99201304

Union Case No: 99-1-088-333

**BEFORE:** Sharon K. Imes

**APPEARANCES:**

**For the Service:** Janet S. Ades, Labor Relations Specialist, Hawkeye District, United States Postal Service, Des Moines, IA.

**For the Union:** Rick Woodard, Vice President, Local 333, National Postal Mail Handlers Union, Des Moines, IA.

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

**DATE OF HEARING:** January 19, 2000

**DATE OF AWARD:** March 7, 2000

**AWARD SUMMARY:**

After reviewing the record and considering the parties' arguments it is concluded that the Service violated the National Agreement and the Local Memorandum of Understanding when it denied annual leave requested outside the vacation period and cited reasons that did not specifically address "business needs" per pay section. The grievance is sustained.

**THE ISSUE:**

Did management violate the National Agreement and/or the Local Memorandum of Understanding (LMOU) in the denial of Annual Leave

outside the Choice Vacation Period? If so, what is the appropriate remedy?

**STATEMENT OF THE CASE:**

Requests for annual leave submitted for periods of time outside the choice vacation period have been denied by management with the reason cited as "outside prime time"; "submit at a later date"; "historical information has overtime being called", and "overtime will be called in building". This action has been grieved by the Union who contends the denials that contain these types of reasons are a violation of the National Agreement, the Local Memorandum of Understanding and are contrary to the settlement of similar grievances during the past several years.

**RELEVANT CONTRACT PROVISIONS:**

**ARTICLE 10  
LEAVE**

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**Section 10.2 Leave Regulations**

The leave regulations in Subchapter 510 of the Employee and Labor Relations Manual, insofar as such regulations establish wages, hours, and working conditions of employees covered by this Agreement, shall remain in effect for the life of this Agreement.

**Section 10.3 Choice of Vacation Period**

- A It is agreed to establish a nationwide program for vacation planning for employees in the regular work force with emphasis upon the choice vacation period(s) or variations thereof.
- B Care shall be exercised to assure that no employee is required to forfeit any part of such employee's annual leave.
- C The parties agree that the duration of the choice vacation period(s) in all postal installations shall be determined pursuant to local implementation procedures.
- D Annual leave shall be granted as follows:
  - D1 Employees who earn 13 days annual leave per year shall be granted up to ten (10) days of continuous annual leave during the choice period. The number of days of annual leave, not to exceed ten (10) shall be at the option of the employee.
  - D2 Employees who earn 20 or 26 days annual leave per year shall be granted up to fifteen (15) days of continuous annual leave during the choice period. The number of days of annual leave, not to exceed fifteen (15), shall be at the option of the employee.
  - D3 The subject of whether an employee may at the employee's option request two (2) selections during the choice period(s) , in units of either 5 or 10 working days, the total not to exceed the ten (10) or fifteen (15) days above, may be determined pursuant to local implementation procedures.

- D4 The remainder of the employee's annual leave may be granted at other times during the year, as requested by the employee.

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#### Section 10.4 Vacation Planning

The following general rules shall be observed in implementing the vacation planning program:

- A The Employer shall, no later than November 1, publicize on bulletin boards and by other appropriate means the beginning date of the new leave year, which shall begin with the first day of the first full pay period of the calendar year.
- B The installation head shall meet with the representative of the Union to review local service needs as soon after January 1 as practical. The installation head shall then:
  - B1 Determine the amount of annual leave accrued to each employee's credit including that for the current year and the amount expected to be taken in the current year.
  - B2 Determine a final date for submission of applications for vacation period(s) of the employee's choice during the choice vacation period(s).
  - B3 Provide official notice to each employee of the vacation schedule approved for each employee.
- C A procedure in each office of submission of applications for annual leave for periods other than the choice period may be established pursuant to the implementation procedure above.
- D All advance commitments for granting annual leave must be honored except in serious emergency situations.

#### Section 10.5 Implementation of the Leave Program

- A If, at the end of the local implementation period provided for in this Agreement, the local parties have not reached agreement on the length of the choice vacation period, the choice vacation period will be 23 consecutive weeks commencing on the last Saturday in April unless the local parties agree to another starting date. The 23 weeks shall include military leave and union leave for conventions and conferences. *The method of selecting vacations shall be determined locally.*
- B The vacation sign-up list, after the initial sign-up period shall be maintained at a local accessible to employees.
- C After the initial sign-up period is completed and vacant

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### ARTICLE 15 GRIEVANCE-ARBITRATION PROCEDURE

#### Section 15.1 Definition

A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employer or of the Union which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.

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**ARTICLE 19  
HANDBOOKS AND MANUALS**

**Section 19.1**

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.

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**ARTICLE 30  
LOCAL IMPLEMENTATION**

**Section 30.1 Current Memoranda of Understanding**

Presently effective local memoranda of understanding not inconsistent or in conflict with this Agreement shall remain in effect during the term of this Agreement unless changed by mutual agreement pursuant to the local implementation procedure set forth below or, as a result of an arbitration award or settlement arising from either party's impasse of an item from the presently effective local memorandum of understanding.

**Section 30.2 Items for Local Negotiations**

There shall be a 30 consecutive day period of local implement which shall occur within a period of 60 days commencing May 1, 1999 on the 20 specific items enumerated below, provided that no local memorandum of understanding may be inconsistent with or vary the terms of this Agreement.

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- C Formulation of local leave program.
- D The duration of the choice vacation period.
- E The determination of the beginning day of an employee's vacation period.
- F Whether employees at their option may request two selections during the choice vacation period, in units of either 5 or 10 days.
- G Whether jury duty and attendance at National or State Conventions shall be charged to the choice vacation period.
- H Determination of the maximum percentage of employees who shall receive leave each week during the choice vacation period.
- I The issuance of official notices to each employee of the vacation schedule approved for such employee.
- J Determination of the date and means of notifying employees of the beginning of the new leave year.
- K The procedures for submission of applications for annual leave during other than the choice vacation period.

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- T Local implementation of this Agreement relating to seniority, reassignments and posting.

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**OTHER RELEVANT PROVISIONS:**

1994 - 1998  
MAIL HANDLER  
LOCAL MEMORANDUM OF UNDERSTANDING  
DSM-P&DC

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**SECTION 30.2C FORMULATION OF LOCAL LEAVE PROGRAM**

1. IN ADDITION TO RIGHTS GRANTED IN ARTICLE 10 OF THE NATIONAL AGREEMENT, REQUESTS FOR ANNUAL LEAVE OTHER THAN THOSE SUBMITTED BY MARCH 15<sup>TH</sup> FOR THE CHOICE VACATION PERIOD, AND OTHER THAN THOSE SUBMITTED BY MARCH 15<sup>TH</sup> FOR THE PERIOD FROM OCTOBER 1 THROUGH JANUARY 7, WILL BE CONSIDERED ON A FIRST-COME FIRST-SERVED BASIS IN EACH PAY LOCATION ON EACH TOUR.
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4. FOR ANNUAL LEAVE SUBMISSIONS OTHER THAN THOSE SUBMITTED BY MARCH 15<sup>TH</sup> FOR THE CHOICE VACATION PERIOD, SUBMITTED IN TRIPLICATE AND HANDED TO THE SUPERVISOR AT LEAST FIVE (5) WORKING DAYS PRIOR TO THE FIRST DAY OF THE REQUESTED LEAVE, A DETERMINATION TO APPROVE OR DISAPPROVE MUST BE MADE WITHIN TWO OF THE APPLICANT'S WORKING DAYS FROM THE TIME OF THE REQUEST.
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7. IF SUBMITTED BY MARCH 15 OF THE CURRENT LEAVE YEAR, REQUESTS FOR ANNUAL LEAVE FOR THE PERIOD OF OCTOBER 1 THROUGH JANUARY 7 WILL BE APPROVED ACCORDING TO SENIORITY BY PAY LOCATION, SUCH REQUESTS WILL BE ACTED ON BY MARCH 30. REQUESTS FOR THIS PERIOD, WHEN SUBMITTED AFTER MARCH 15, WILL BE TREATED AS ALL OTHER INCIDENTAL LEAVE AND HANDLED.
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**SECTION 30.2-D THE DURATION OF THE CHOICE VACATION PERIOD.**

- A. THE CHOICE VACATION PERIOD WILL BE FROM APRIL 15 TO SEPTEMBER 30.
- ...

**SECTION 30.2I THE ISSUANCE OF OFFICIAL NOTICES TO EACH EMPLOYEE OF THE VACATION SCHEDULED APPROVED FOR SUCH EMPLOYEE.**

AFTER THE SELECTION OF VACATIONS HAS BEEN COMPLETED, A DUPLICATE COPY OF THE 3971, SIGNED BY THE SUPERVISOR, SHALL BE THE OFFICIAL NOTICE OF EACH EMPLOYEE'S VACATION APPROVED FOR THE CHOICE VACATION PERIOD. -ALL SELECTIONS SHALL BE SUBMITTED IN DUPLICATE. THESE 3971'S SHALL BE RETURNED BY MARCH 30<sup>TH</sup>.

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**SECTION 30.2K THE PROCEDURES FOR SUBMISSION OF APPLICATION FOR ANNUAL LEAVE DURING OTHER THAN THE CHOICE VACATION PERIOD**

(SEE SECTION 30.2C) (#1 & 7)

ELM 12, May 1989

5 Employee Benefits

510 Leave

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511 General

511.1 Administration Policy

The U.S. Postal Service policy is to administer the leave program on an equitable basis for all employees, considering (a) the needs of the USPS and (b) the welfare of the individual employee.

511.2 Responsibilities

511.21 Postal Officials

Postal officials:

- a. Administer the leave program.
- b. Inform employees of their leave balance.
- c. Approve or disapprove requests for leave
- d. Record leave in accordance with Handbook F-21, *Time and Attendance*, or Handbook F-22, PSDS *Time and Attendance*.
- e. Control unscheduled absences (see 511.4).

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511.22 Postal Employees

Postal employees:

- a. Request leave by completing Form 3971, *Request for or notification of Absence*.
- b. Obtain approval of Form 3971 before taking leave – except in cases of emergencies.
- c. Avoid unnecessary forfeiture of annual leave.

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512 Annual Leave

512.1 General

512.11 Purpose

Annual leave is provided to employees for rest, recreation, and for personal and emergency purposes.

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512.4 Authorizing Annual Leave

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**512.422 Approval/Disapproval**

The supervisor is responsible for approving or disapproving application for annual leave by signing Form 3971, a copy of which is given to the employee. If a supervisor does not approve an application for leave, the disapproved block on Form 3971 is checked and the reasons given in writing in the space provided. When a request is disapproved, the granting of any alternate type of leave, if any, must be noted along with the reasons for disapproval. AWOL determinations must be similarly noted.

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**512.5 Vacation Planning**

**512.61 Bargaining Unit Employees**

For these employees, leave is subject to specific vacation planning provisions of applicable collective-bargaining agreements. Note also:

- a. For all regular employees, both full-time and part-time, vacation leave is granted when requested – to the extent practicable.
- b. For part-time flexible employees, vacation planning is limited to accumulated and accrued leave.

Handbook F-22, October 1990

**320 Annual Leave (refer to the ELM, part 512)**

**321 Definition**

Annual leave is provided to employees for rest, for recreation, and for personal and emergency purposes.

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**Exhibit 3-1 (p. 1)  
Front Side of Form 3971  
Text Reference 312.4**

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**21 Approved Disapproved (Give Reason)**

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**Exhibit 3-1 (p. 2)  
Explanations of Various Blocks of Form 3971**

The following are explanations of the various information blocks that appear on the front side of Form 3971.

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**(21) Approved/Disapproved Supervisor's action on the request**

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***POSITIONS OF THE PARTIES:***

The Union contends reasons cited by management such as "outside prime time", "submit at a later date", "historic information has overtime being called", and "overtime will be called in the building" violate the National Agreement and the Local Memorandum of Understanding (LMOU) since they are not only arbitrary and capricious but since they are also contrary to the procedures set forth in the LMOU. Further, it declares that such reasons conflict with the agreement reached by the parties when they have settled previous grievances over this same issue.

Stating it does not claim that all or that any of the leave requests which have been submitted into evidence should have been approved, the Union argues it is grieving this matter because it believes the National Agreement and the LMOU require management to consider each annual leave request separately and to deny such requests based on business conditions and the needs of a specific pay location. It continues that denials such as "submit at a later date" provide no reason for denying the request and that denials such as "overtime will be called in the building" violates the LMOU since the reason does not state that the decision was based upon the needs of the pay location.

The Union continues that this is not a new problem and states management, over the years, has consistently denied requests for annual leaves in a manner to similar to that now being grieved. It adds that when this issue has been grieved in the past, the grievances have been settled at various stages of the grievance procedure with management agreeing each time to abide by the contract language pertaining to leave requests. It notes, however, that the problem with these solutions is that the grievance is often resolved long after the requested date has passed and that when new requests are made management ignores the settlements reached. Finally, it states the reason it is again grieving management's actions is that it hopes to gain nothing more than compliance with the National Agreement and the LMOU.

As a remedy, the Union seeks that management be ordered to cease and desist in its violation of the contractual provisions and that those employees whose annual leave has been denied for the reasons similar to those cited in the evidence submitted during this hearing have their requests reconsidered if the requests were for annual leave between the time the award is issued and April 15 when this year's choice vacation period begins.

The Service argues, however, that it has the exclusive right to manage its business and that the Union has failed to show the reasons cited for denial annual leave were arbitrary or

capricious. As support for its position, it cites the fact that some of those denied annual leave at the time the request was submitted actually were granted the same requested annual leave at a later date. The Service also maintains that the evidence submitted by the Union is not sufficient since only a handful of denials were provided, some of which pertained to part-time flexibles rather than full-time regulars, and that they all pertained to only one tour.

The Service adds that it is not mandated to approve incidental leave and that it has complied with the ELM when signing the 3971s. Further, it asserts that management did cite reasons when it denied the requests and states that it is irrelevant if the Union does not like those reasons. Finally, it declares that since leave was granted to the majority of those employees whose requests were submitted as evidence in this dispute, there was no harm done to these employees and therefore the grievance should be denied.

**DISCUSSION:**

After reviewing the record and considering the parties' arguments it is concluded that the Service violates the National Agreement and its ELM provisions when it refuses to grant annual leave outside the choice vacation period for reasons similar to the following: "outside prime time"; "submit at a later date"; "historical information has overtime being called", and "overtime will be called in building". While the Service correctly states it has the right to decide whether annual leave will be granted when requested outside the choice vacation period, its right to do so is limited by Articles 10 and 19 of the National Agreement and Section 30.2K of the LMOU. Under these provisions, the Service may deny appropriately requested leave only when its denial is based upon prevailing business conditions within each section. Reasons such as those that have been cited do not provide sufficient information to the employee whose request is denied to allow either the employee or the Union to determine whether the Service has been reasonable or arbitrary and capricious when it denied such request.

In rejecting the Service's position in this dispute, it is noted the Service argued that most of the employees whose requests were denied and whose denials form the basis of this grievance ultimately were granted the leave requested. This fact is irrelevant since the initial denial is the issue being grieved and the denials do fail to provide a reason that is detailed enough to allow the Union or the employee to determine whether the Service was being reasonable in its denial of the request. While the Step 3 representative for the Service indicated the Service has denied these leave requests based upon "historic data consisting of overtime needs, volumes, plan failures,

delayed mail, etc," the record does not support that finding. Some of the reasons cited in this dispute did not refer to historical data at all and those that did were general in comment and referred to the building in general and not the section. Further the denials that did not refer to historical data failed altogether to cite a specific reason for denying the request that could be interpreted as a "business need". Without information that is specific, neither the Union nor the employee has a basis for determining whether the denial should be grieved and, the reasons cited, therefore become arbitrary.

Accordingly, the following award is issued:

**AWARD**

The grievance is sustained. The Service is ordered, when denying requests for annual leave outside the choice vacation period, to base its denials upon business needs and to provide reasons informative enough for the Union or the employee to determine whether the reasonableness of that decision should be challenged. Further, the Service is ordered to review any request by an employee that has been denied annual leave for a reason similar to those cited above between the issuance of this award and April 15; to reconsider these requests, and if denying them to provide adequate information as to the reason for denial.

By Sharon K. Imes  
Sharon K. Imes, Arbitrator

March 7, 2000  
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