

I. FACTS

Cathy Jones, the Grievant, is a data conversion clerk (operator) at the Des Moines, Iowa, Remote Encoding Center (REC Site) with seniority since July 31, 1994. The Grievant injured her knee in the spring of 1997. On June 27, 1997, she had surgery and was released to return to work as of July 14, 1997, on the condition she keep her knee "extended and elevated." Local Management decided not to allow the Grievant to return to work with such restrictions.

II. ISSUE

Did the Postal Service violate the applicable provisions of the National Agreement when it denied the Grievant's light duty request? If so what is the remedy?

III. RELEVANT CONTRACT PROVISIONS

Article 13	Assignment of Ill or Injured Regular Workforce Employees
Article 15	Grievance-Arbitration Procedure

IV. POSITION OF THE UNION

The Union pointed out that the record shows the Grievant had been accommodated by allowing her to prop up her leg on a stool from March 10, 1997, until she had her surgery on June 27, 1997. According to the Union, Management's Step 2 denial does not directly address the Grievant's request, but instead deals with general prohibitions. The Union also notes that in the Step 3 denial, it is stated that if the REC manager knew the Grievant was propping her leg up prior to her operation, he would not have allowed it. The Union asserts this was accomplished by allowing the Grievant to work in an area with no one next to her.

The Union notes the Postal Service adduced testimony from Dee Thorson about the operation of the REC Site. The Union, however, stresses Thorson did

not work on the floor. The Union maintains the Postal Service has not refuted the evidence showing the Grievant was accommodated. Given this fact, coupled with Management's commitment to give the greatest consideration to requests for light duty, the Union insists there was no reasonable basis to deny the Grievant's July request.

The Union notes the Arbitrator had the opportunity to view the work area. According to the Union, the Arbitrator saw that the keyboard could be moved to help the Grievant see the screen if her leg was propped up. The Union maintains that testimony from Management about moving people about in the operation was never raised in the grievance steps. As for what is ergonomically recommended, the Union states employees cannot and do not sit in a perfect position all day long.

The Union asserts the Grievant was not seeking eight (8) hours a day and had demonstrated she was capable of safely working with her leg propped up on a chair. The Union concludes, arguing there was no basis for denying the Grievant her light duty request.

V. POSITION OF THE POSTAL SERVICE

At the outset, the Postal Service stresses the Union stipulated that had the REC manager known the Grievant was propping her foot up, she would not have been allowed to continue. The Postal Service reminds us that under Article 13, the only person who is responsible for making light duty assignments is the installation head. The Postal Service notes the Grievant's request was submitted, and Roy Curtis, the installation head, denied the request because he thought it was a safety hazard.

The Postal Service claims the evidence indicates it is rare to have data conversion clerks working off by themselves. The Postal Service notes Dee Thorson said she did not see the Grievant working with her leg up. The Postal

Service argues that the fact a supervisor might have let the Grievant elevate her leg on a chair does not create an entitlement, nor does such an act have to be perpetuated when Management is obligated to provide employees with a safe working environment.

The Postal Service claims the Grievant was in a weakened state, and it would be unreasonable to allow her to sit in a manner that could potentially injure her. The Postal Service also argues that the Union's claim it must provide the Grievant the greatest consideration for a light duty assignment is misplaced. The Postal Service submits such a standard is only required when an employee makes a permanent light duty request.

VI. DISCUSSION

The Grievant, who is also a group leader, testified that prior to her surgery, she provided Management with a medical statement (Joint Exhibit 5) which requested she be allowed to prop her leg up on a stool. The Grievant said that from March 10 until she took off work to have surgery, she elevated her leg on a chair. She indicated she did this when she worked in the first two rows of "Milwaukee." According to the Grievant, when she worked in the middle aisle, Supervisor Kelly Hardinger told her to keep one foot on the floor and use the bar for the other. The Grievant stated without rebuttal she performed her duties without complaints.

Cathy Beaman is a transitional employee (TE), data conversion operator, and is also a Union steward. Beaman said she wrote the grievance. According to Beaman, she has the same duties as the Grievant. Beaman maintained that from March until the Grievant's surgery, she saw the Grievant work mostly with her leg up on a chair. Beaman said the Grievant addressed the keyboard "a little bit sideways." Beaman stated the Grievant worked Milwaukee, and there was no one with her so she could use the chair for her leg.

Dwight Porter, a group leader, data conversion operator, as well as a Union steward, testified he saw the Grievant work with her leg propped up from March until June. He said she had her leg propped up on a chair and less frequently put her leg on the ledge.

Dee Thorson, the acting Manager of the REC site and current installation head, testified that operators frequently change positions as they move from one city to another. She estimated an employee could move from one to ten times a tour depending on mail volume. She said it would be uncommon to have a single employee in a row by his/her self because of the technical aspects of the system being used. Thorson said she was not aware of the Grievant elevating her leg between March and June 1997, nor was she aware of what the supervisors allowed.

Patricia Larson stated that between March and June 1997, she was a supervisor on Tour 2 working from 1400 to 2330 hours. She said she was in the same pay location as the Grievant. Larson said she never saw the Grievant with her leg propped up. Larson admitted she was not the Grievant's supervisor.

Roy Curtis' Step 2 denial indicated the Grievant's request for light duty was denied because of "concern for the employee's safety and health." Curtis maintained that placing her leg on the ledge under her station was a safety hazard. He also noted that such a position would prevent her from "following ergonomic guidelines established for Data Conversion Operators."

Management's Step 3 denial reiterated Curtis' position and noted that:

...the Union's contention that grievant was allowed to engage in such elevation previously is unsupported and the REC manager has indicated that such would not be the case if he had knowledge thereof.

The clear testimony of the Grievant is that Supervisors Tom Kraft and Kelly Hardinger allowed her to work with her leg propped up on a chair. The Postal Service attempted to rebut the Grievant's assertions, as well as the statements of witnesses Beaman and Porter. I say attempted because neither Dee Thorson nor Patricia Larson was the Grievant's immediate supervisor. Apparently, the Grievant's begin tour was 1930 hours. Although there was a four hour overlap between their two shifts, Larson was not able to establish she had a reason to observe the Grievant working or, in fact, did take particular notice of the position of the Grievant's leg from March until she left on a detail in mid May.

The credible evidence of record indicates Management allowed the Grievant to work with her leg propped up on a chair and/or propped on the ledge/bar under her work station from March until she left work to have her surgery on or about June 23, 1997.

One of the essential problems of Management's defense of its denial of the Grievant's light duty request is that Roy Curtis made no effort whatsoever to determine the actual facts. A fair reading of the grievance papers indicates Curtis assumed the request was tied to the Grievant resting her leg on the ledge beneath her work station. Curtis apparently based his decision on the results of a Safety and Health Committee meeting held on May 15, 1997, wherein the Committee addressed several problem areas. With respect to the console ledge, the Committee notes state:

Employees are not allowed to elevate their feet, using the console table, due to not being ergonomically correct or approved. Employees are to be careful to not move or break cables that are behind the console tables as this could result in either a repair of \$18.00 for a cable replacement or up to \$200.00 to replace a board.

While the ergonomically correct sitting position is mentioned in the quoted problem to be addressed, the emphasis is on the cost of damage as opposed to the situation presenting a safety hazard. But, assuming there actually was a safety concern, Manager Curtis made no effort to determine if allowing the Grievant to temporarily prop her leg up on a chair for four (4) hours a day for a short period of time would adversely impact the Grievant's health. He did not because, as indicated above, his attention was directed solely at the ledge problem.

Had a thorough analysis of the Grievant's request been made, Curtis would have learned the Grievant had been accommodated for some three months by allowing her to prop her leg up on a chair or use the ledge under her console. Had Curtis reviewed such facts and rejected the use of the ledge, one would be hard pressed to conclude Curtis' decision was unreasonable. But the fact is the Grievant mostly propped her leg up on a chair with no apparent negative health impact. It is recognized that an ergonomically correct posture is a desirable objective. Requests for temporary light duty which may require some short term modifications are not ruled out by reason of ergonomic studies. Curtis is not an ergonomic expert. He assumed the Grievant's request was tied only to the elevation of her leg on the ledge. Had he took the time to determine what took place between March and June 1997, perhaps he might have been advised to submit that information to a medical authority and seek an opinion.

The undersigned recognizes the installation head and/or designee makes the decision on light duty requests. Clearly, the installation head is not bound by the actions of supervisors in such matters. But, the actions of supervision cannot be ignored, especially when they show that an accommodation is not unreasonable. Herein, we have an installation head who

acted without the necessary facts. Partially blinded by a lack of information, his decision to deny the Grievant light duty request was arbitrary.

VII. AWARD

The Postal Service violated the applicable provisions of the National Agreement when it denied the Grievant's light duty request. The Grievant is to be made whole by compensating her for four (4) hours a day for the days she would have worked between July 14 and when she returned to work on or about July 22, 1997.