

# AMERICAN POSTAL WORKERS UNION, AFL-CIO

GRIEVANCE  
STATUS LETTER  
(CENTRAL REGION)

GRIEVANT—PERSON OR UNION FROM LINE 8 (LAST NAME FIRST)		APWU-USPS NATIONAL GRIEVANCE
CLASS ACTION		#
WORK LOCATION CITY AND ZIP CODE FROM LINE 10		USPS REGIONAL GRIEVANCE
Des Moines, IA		# COC-4K-C 11215
CONTRACT ISSUE	CRAFT	APWU REGIONAL GRIEVANCE
ART. 13 - Light Duty - Failure to	Clerk	# 10215
TO Comply with Prior Award	DATE	APWU LOCAL GRIEVANCE
(Management Penalty)	August 23, 1994	# 77-91-7251

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

D/A: 08/18/94 - Reg.  
SUSTAINED  
ADVOCATE:  
Carl F. Casillas

PYMT. # 503459

- WITHDRAW FROM STEP 4 OR ARBITRATION
- SETTLEMENT
- ARBITRATION AWARD
  - NATL. CERTIFICATION
  - LOCAL CERTIFICATION
- Arbitrator's Statement - Mark L. Kahn  
\$1508.18 -- D/H: July 26, 1994

ATTACHED IS DOCUMENTATION IN SUPPORT OF ACTION INDICATED.

The arbitrator sustained the grievance, indicating that the Postal Service did not comply with the prior Award by Arbitrator Edwin H. Benn, dated January 15, 1991, or with Article 13.4.A. of the Agreement, in that it failed to "make 'every effort' to find work for [Letter Carrier Theresa] Edwards in the Carrier Craft consistent with Edwards' medical restrictions."

He directed the Postal Service to comply promptly with the above-cited Award by Arbitrator Benn. Failure to comply within 30 days will result in a \$2000.00 penalty against Postal Management.

JAMES P. WILLIAMS, COORDINATOR  
CENTRAL REGION, APWU, AFL-CIO  
330 SOUTH WELLS STREET, ROOM 1402  
CHICAGO, ILLINOIS 60606

NBA St. Louis Div. Office, APWU  
President, Des Moines, IA A/L (0044), APWU

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REGULAR ARBITRATION PANEL

In the Matter of the Arbitration

between

UNITED STATES POSTAL SERVICE

and

AMERICAN POSTAL WORKERS UNION,  
AFL-CIO

GRIEVANT: Class Action

POST OFFICE: Des Moines, IA

CASE NO: COC-4K-C 11215

BEFORE: Mark L. Kahn, Arbitrator

APPEARANCES:

For the USPS: Richard Snider, Labor Relations Specialist  
Midwest Area, St. Louis, MO

For the APWU: Carl Casillas, National Business Agent  
St. Louis Region, Clerk Division

PLACE OF HEARING: 7900 Hickman Boulevard, Des Moines, IA

DATE OF HEARING: July 26, 1994

AWARD:

1. The grievance (Local #77-91-7251) is sustained. The Postal Service did not comply with the Award of Arbitrator Edwin H. Benn dated January 15, 1991, or with Article 13.4.A. of the Agreement in that it failed to "make 'every effort' to find work for [Letter Carrier Theresa] Edwards in the Carrier Craft consistent with Edwards' medical restrictions."
2. The Postal Service is now directed to comply promptly with the above-cited Award of Arbitrator Benn (C7C-4K-C 8906). If it fails to do so within thirty (30) days of its receipt of this Award, the Postal Service must pay two thousand dollars (\$2,000.00) to the Des Moines, IA Area APWU Local for its failure once again to comply with its obligations under Article 13.4.A. of the Agreement.
3. Pending the outcome of this job search, Edwards will remain in her OWCP position. Nothing in this Award or in the Opinion below implies that there is in fact a permanent limited duty assignment available for Edwards in the Carrier Craft at Des Moines, IA.

DATE OF AWARD: August 18, 1994

  
Mark L. Kahn, Arbitrator

RECEIVED AUG 22 1994

## OPINION

The instant grievance (Local #77-91-7251) was submitted at Step 2 on July 25, 1991, as a Union Grievance (Class Action) signed by Barbara J. Versteegh, President, Des Moines IA Area APWU Local:

On January 15, 1991, Arbitrator Edwin H. Benn gave his arbitration award on C7C-4K-C 8906, 77-87-3467 and stated "the Service shall now comply with the provisions of Article 13.4A and make 'every effort' to find work for [Theresa] Edwards in the carrier craft consistent with Edwards' medical restrictions." Through numerous requests for information and several meetings with numerous management people, the union inquired about management's "every effort" and even gave numerous suggestions on duties that could be performed by Ms. Edwards.

On May 28, 1991, Mr. Bradley J. Schetzslle, Area Manager Stations issued 2 memos stating duties that were to be performed at stations by several clerks and mailhandlers. These duties could have been performed by Ms. Edwards and in fact are performed by Don Wilcox, limited duty carrier at one station, Metro Annex. The union discussed this with Ms. Shirley Smith, Manager Safety and Health Services, who is directly over Injury Compensation, and to this date we have had no response from Ms. Smith. The union contends management has not made "every effort" as mandated by Arbitrator Benn and therefore has failed to bargain in good faith, by not complying with the Arbitrator's mandate. The union also contends that we have proven that there are positions within the Carrier Craft that Ms. Edwards could perform within her medical limitations.

### CORRECTIVE ACTION REQUESTED

The Service comply with Arbitrator Benn's award. Ms. Edwards be placed in the carrier craft and be given duties that comply with her medical restrictions, i.e., duties listed in Bradley J. Schetzslle, Area Manager Stations memo dated May 28, 1991.

This grievance, after its denial at Step 2 on September 6, 1991, and at Step 3 on July 31, 1992, was appealed to arbitration on August 24, 1992. The hearing was conducted by the undersigned Arbitrator in Des Moines, Iowa, on July 26, 1994, and no post-hearing briefs were filed.

## Background

The earlier facts involved in this case are set forth in the decision of Arbitrator Edwin H. Benn dated January 15, 1991, at the Des Moines, Iowa, Post Office (C7C-4K-C 8906), hereafter cited as Benn. As stated in Benn:

By letter dated December 4, 1987 and effective December 12, 1987, the Service offered Letter Carrier Theresa Edwards a modified Clerk position in the Des Moines, Iowa OWCP Office [Office of Workers' Compensation Programs] without first posting that position in the Clerk Craft. Edwards was offered that position after she suffered an on-the-job injury in August 1985 and further after it was medically determined that Edwards could not lift over five pounds; could perform no repetitive bending or stooping; and could not engage in prolonged standing or sitting.

The job offered to Edwards in the OWCP Office (which she accepted on December 8, 1987) had a Monday through Friday, 7:00 a.m. to 3:30 p.m. schedule and required Edwards to perform the following duties:

1. In charge of opening and dating the mail.
2. Placing the assigned OWCP number on all correspondence.
3. Placing the assigned OWCP number on ledger card and files.
4. Type form letters.
5. Request form letters.
6. Inventory and order all supplies.
7. Answer phone.
8. Make copies on request.
9. Filing.
10. Matching correspondence with correct claims.
11. Receptionist.
12. Create new folder for new claims including original CA-1.
13. Other miscellaneous duties as assigned.

According to Injury Compensation Supervisor Joanne Rose, the position given to Edwards was offered pursuant to Part 546 of the ELM and the job was tailored specifically to meet Edwards' medical restrictions. Rose testified that prior to offering Edwards the position in the OWCP Office, she tried to find Edwards work in the Carrier Craft that was within Edwards' limitations. . . .

Rose had not personally investigated whether Carrier Craft work was available for Edwards. Rose's decision that none was available for Edwards in the Carrier Craft was based on information supplied by a Carrier Supervisor and his Area Manager, as well as by a General Supervisor of Mail Handling.

The only issue originally presented in Benn was whether the Postal Service violated the Agreement when it offered Edwards the modified Clerk position in the Des Moines OWCP Office without first posting that position for bid in the clerk craft. On this issue, Arbitrator Benn held:

. . . The evidence firmly establishes that the position in the OWCP Office was specially created for Edwards as a result of her serious medical restrictions; the position as it was constituted did not exist because it was created for Edwards and the position will exist only for the time that Edwards remains on these specific medical restrictions. Therefore, the position created for Edwards was not a "newly established craft duty assignment" under Article 37.3.A. Hence, there was no requirement that Edwards' job in the OWCP Office be posted for bid in the Clerk Craft.

Arbitrator Benn also found, however, that the Postal Service had failed to comply with its obligations under Article 13, Section 4, of the Agreement:

#### ARTICLE 13

#### ASSIGNMENT OF ILL OR INJURED REGULAR WORKPLACE EMPLOYEES

\* \* \* \*

#### 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. [Emphasis as added by Arbitrator Benn.]

Arbitrator Benn observed that Injury Compensation Supervisor Rose could rely on Edwards' supervisors for information, but that "good faith reliance is not the standard in this proceeding." He added:

Without the testimony of those having direct knowledge concerning what work was or was not available for Edwards, I cannot find that these brief and limited contacts meet the requirement for the Service to make "every effort" to find work for Edwards in the Carrier Craft. To make such a finding would reduce the requirement of that section to words with little meaning. . . .

Arbitrator Benn's Award, accordingly, was as follows:

The grievance is sustained in part. The evidence establishes that the rehabilitation position given to Letter Carrier Theresa Edwards in the Des Moines, Iowa OWCP Office was not a "newly established craft duty assignment" within the meaning of Article 37.3.A.1. of the Agreement. Therefore, the Service was not required to post that position in the Clerk Craft prior to assigning that position to Edwards. However, under the circumstances of this case, the evidence establishes that prior to the assignment of that position in the OWCP office to Edwards, the Service did not make "every effort" to reassign Edwards in the Carrier Craft as required by Article 13.4.A. of the Agreement. As a remedy, the Service shall now comply with the provisions of Article 13.4.A and make "every effort" to find work for Edwards in the Carrier Craft consistent with Edwards' medical restrictions. In accord with Article 13.4.A. only "[a]fter all efforts are exhausted in this area" can Edwards keep the position in the OWCP Office.

A memorandum dated February 22, 1991, was sent by Shirley A. Smith, Manager, Safety & Health Services, Des Moines Division, to the Managers/Superintendents of the eleven Postal Service facilities in the Des Moines Division:

We are currently seeking carrier work for a permanent limited duty assignment for an employee who cannot perform the full duties of a carrier position. The limitations are as follows: No lifting over 5 lbs., no repetitive bending or stooping and no prolonged standing or sitting.

Please advise if you do or do not have 8 hrs. work available on daily basis within these limitations.

Your response is needed not later than 2/26/91. (As indicated above, a negative response is necessary, if you do not have work available.) If you have any questions, please call me at 283-7555. Thank you!

Each of the eleven stations provided a terse negative response.

The reply from Metro Station contained this paragraph:

We have been, and request to continue using Donald Wilcox . . . in a limited duty capacity. He is being utilized eight hours a day Mon - Fri. If someone is available for eight hours on Saturdays, we would welcome this help.

On March 8, 1991, responding to a Union query, D. James Shipman, Field Director, Human Resources, Des Moines Division, wrote to Local APWU President Versteegh as follows:

We have implemented Arbitrator Benn's award in Case C7C-4K-C 8906. After receiving Arbitrator Benn's opinion and award, we canvassed each of our stations and branches concerning work for Theresa Edwards. Those having direct knowledge concerning what work was or was not available for Edwards have informed us that they do not have 8 hours work permanently available on a daily basis within her limitations. This satisfies the evidentiary deficiency noted by Arbitrator Benn concerning the lack of probative evidence "by those individuals directly over the Carrier operations . . ."

With respect to Don Wilcox, I note that he is not similarly situated. Moreover, Arbitrator Benn has already ruled on that type of issue when he stated, "The Union's arguments concerning the past placement of other injured Carriers into the Carrier Craft are therefore moot. But in passing, the treatment of other Carriers does not aid much in the assessment of whether or not the treatment of Edwards violated the Agreement."

For these reasons, it is my view that we have fully complied with every aspect of Arbitrator Benn's award.

Shipman testified that Manager Shirley Smith discussed with him the responses to her February 22, 1991, memorandum; that he did not discuss Edwards' situation with anyone at the various stations; that his knowledge is limited to how those people responded to Smith's

memorandum; and that "I would assume the Delivery Supervisor at each station made the initial determination, subject to review by the Station Manager." Shipman also testified that the work performed by a limited duty employee is charged to a different account in order to encourage a willingness to accept them among the postal stations.

Edwards, meanwhile, has remained in the limited OWCP position that she accepted on December 8, 1987, and has been paid at the Letter Carrier rate. Effective May 3, 1991, her limited status was changed from "ongoing" to "permanent" with these medical restrictions: "No lifting over 10 pounds, sedentary work, no bending, squatting, climbing, or kneeling, can work 8 hours per day." It should be noted that Edwards is not the grievant in this case, did not appear at the hearing, and is presumably not unhappy in her OWCP position. The grievant in this case is the Union, which seeks to enforce its interests in Article 13.4.A.

The Union maintains that Edwards is capable of performing the kinds of job duties contained in modified Carrier positions held by others in the Carrier Craft with physical restrictions, including Wilcox who has now retired. The Union asserts that Edwards could have handled Wilcox's position, but that when Wilcox retired he was replaced by Clarissa Siaz. (Her physical limitations are listed as: "No lifting over 10 pounds. Standing 2-3 hours or more as tolerated. No repetitive bending or stooping (be allowed a 5 minute break out of every hour). Can carry 1 hour mounted route.")

The Union contends that the Employer has again failed to meet its obligation under Article 13.4.A. and has thereby also failed to comply with Benn. Once again, says the Union, the Employer has relied solely on hearsay to support its case. The post-Award efforts of the Service to locate a Carrier Craft position for Edwards were, in the Union's view, much like the pre-Award efforts that Arbitrator Benn determined were insufficient. The Union submits that a mere canvass of the stations by memorandum does not constitute the "every effort" that Benn directed the Employer to make. The Union concludes that its grievance should be sustained; that the Employer should be directed to make "every effort" in compliance with Benn to locate a job for Edwards within the Carrier Craft; and that the remedy should consist of pay at the overtime rate for all hours worked by Edwards until the Postal Service actually complies with Benn.<sup>4</sup>

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<sup>1</sup> The Union cites: E7C-2L-C-45242, Marietta, OH, Arb. Linda DiLeone Klein, 09-23-92 (pay at overtime rate for Clerks available for clerk duties assigned to PTF Carriers 06/01-14/91); E4S-2G-C-31461/2/5/7/8, Greensboro, NC, Arb. R.G. Williams, 03-05-90 (grieving Special Messenger employees entitled to overtime pay for work performed in their classification by PTF Carriers when Special Messengers were on off days); C0C-4K-C 2987, Fort Dodge, IA, Arb. R.W. McAllister, 09-23-93 (for improperly assigning a PTF Carrier to light duty work in Clerical Craft, 143 1/2 hours at overtime rate paid to Fort Dodge local for distribution); and NOV-1M-C-5023, Staten Island, NY, Arb. R.M. Kelly, 07-26-93 (for a continuing knowing misassignment of work, 3,105 hours over 34 1/2 months, in violation of previous arbitration award, Service is ordered to pay Union \$6,210).

## Discussion

The issue in this case, as agreed by the parties, is properly expressed as follows:

Did the Postal Service make "every effort" to find work for Letter Carrier Theresa Edwards within her own craft as required by Arbitrator Benn's Award dated January 15, 1991? If not, what shall the remedy be?

The record indicates that the only compliance effort undertaken by the Employer was the canvass initiated by Manager Smith's memorandum dated February 22, 1991, to the Managers/Superintendents of the eleven Des Moines Division stations. All of their responses were negative: each stated that no "permanent limited duty assignment" was available for an employee with Edwards' limitations. This was the full extent of the effort made, subsequent to Benn, to locate a position for Edwards in the Carrier Craft.

This effort was, in my judgment, far short of complying with the "every effort" required by Article 13.4.A. as clarified by Benn. Smith's memorandum was perfunctory. It merely listed Edwards' physical limitations while saying nothing about her qualifications or presenting information about the content of her OWCP position. It contained no ideas about how various Carrier functions might be combined to create a position Edwards could handle. No follow-up was undertaken by Smith or Shipman (or by any other member of management above the station level) to explore with station heads the feasibility of a positive response.

In Benn, Injury Compensation Supervisor Rose relied solely on second-hand information from two supervisors and an Area Manager

and failed to conduct any first-hand investigation. After Benn, Smith relied solely on the second-hand written replies to her perfunctory memorandum and failed to conduct any first-hand investigation. In the subsequent arbitration hearing before me, as in Benn, there was no testimony "of those having direct knowledge concerning what work was or was not available for Edwards".

The plain language of Article 13.4.A. demands more than "an" effort. "Every effort" means a rigorous and thorough investigation by appropriate qualified line management and/or staff personnel to uncover any viable basis on which Edwards could be retained in her Carrier Craft. This mandate is reinforced by the directive that the employee may not be reassigned to some other craft or occupational group until "[a]fter all [such] efforts are exhausted . . ."

I therefore conclude that the Employer did not comply with this portion of Arbitrator Benn's Award and that the instant grievance must be sustained. My Award will again direct the Employer to fulfill its obligations under Article 13.4.A.

Because Edwards herself has not been adversely affected by the OWCP assignment she has held since December 8, 1987, at her Carrier rate of pay, I do not consider it appropriate to grant the monetary remedy proposed by the Union. I am, however, fully cognizant of the need to encourage Employer compliance with its contractual obligations. Accordingly, the above Award provides for a monetary remedy in the event that the Employer fails to comply fully with its Article 13.4.A obligations in Edwards' case within thirty days after the Employer's receipt of this Award.