

American Postal Workers Union, AFL-CIO

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

GRIEVANT-PERSON OR UNION FROM LINE 8(LASTNAMEFIRST)
HANSEN, M.

WORK LOCATION CITY AND ZIP CODE FROM LINE 10

DES MOINES, IA.

USPS REGIONAL GRIEVANCE

190C-11-C96012044

CONTRACT ISSUE

ARTICLE 13 -- LIGHT DUTY

CRAFT

CLERK

APWU REGIONAL GRIEVANCE

13408

DATE

October 9, 1998

APWU LOCAL GRIEVANCE

77-95-10876

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

D/A: 10/5/98 REG
SUSTAINED
ADVOCATE:
Carl Casillas

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

PYMT. # 505626

- Arbitrator's Statement -- John C. Fletcher
\$1,189.50 -- D/H: September 29, 1998

ATTACHED IS DOCUMENTATION IN SUPPORT OF ACTION INDICATED

The Arbitrator stated, "The grievance is sustained. The National Agreement was violated when Grievant was denied light duty work solely on the grounds that all available work within her restrictions was in a higher pay level. Grievant is to be made whole for all wage and benefit losses incurred during the time she was denied assignment to available light duty work."

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

LFP:Inf

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

REGULAR REGIONAL ARBITRATION PANEL

In the Matter of the Arbitration)
)
 between) **Grievant:** Marlys J. Hansen)
) **Post Office:** Des Moines, Iowa)
 United States Postal Service) **Case No:** I90C-11-C 96012044)
)
 and)
)
 American Postal Workers Union)

Before: **John C. FLETCHER, Arbitrator**

Appearances:

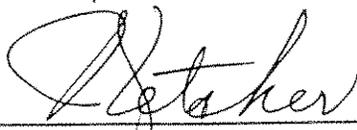
For the Postal Service: Ms. Marcia G. Grant
Labor Relations Specialist - Hawkeye District
Des Moines, Iowa 50318-9401

For the Union: Mr. Carl Casillas
National Business Agent - Clerk Division
Kansas City, Missouri 64131

Place of Hearing: Des Moines, Iowa
Date of Hearing: September 29, 1998
Date of Award: October 5, 1998
Relevant Contract Provisions: Article 13 - Light Duty
Contract Year: 1990 - 1994
Type of Grievance: Contract - Denial of Light Duty

Award Summary

The grievance is sustained. The National Agreement was violated when Grievant was denied light duty work solely on the grounds that all available work within her restrictions was in a higher pay level. Grievant is to be made whole for all wage and benefit losses incurred during the time she was denied assignment to available light duty work.



John C. FLETCHER, Arbitrator

OPINION AND AWARD

I90C-II-C 96012044 - Marlys J. Hansen
Des Moines, Iowa

Background:

The herein Grievant, Ms. Marlys J. Hansen, presently the occupant of a Level 6 Best Qualified Accounting position, was at all times involved in this grievance a Level 4 Mail Processor. Before and after the off-duty injury causing Grievant to request light duty, Mail Processors in the Des Moines facility routinely were assigned manual Level 5 Distribution and Processing tasks, at times when their Level 4 mail processing equipment was down for daily maintenance, and at times when there was no other Level 4 work available in the Unit. Grievant, according to her unchallenged testimony, before her injury on practically a daily basis, regularly worked some of her Mail Processing Tour performing Level 5 tasks, for which she received Level 5 pay.

As a result of her off-duty injury, Management accommodated Grievant with light duty work for nearly nine months, between January and September 1995. Periodically during that period she submitted required documentation supporting here entitlement to light duty, in accordance with the published *Light Duty Policy*, dated December 30, 1994, in place in the facility. On September 19, 1995, the Des Moines Plant Manager acknowledged receipt of some "additional documentation" that Grievant submitted as required by the *Policy*. However he did not continue her on light duty, on the basis that there "were no duties that could be performed by a Mail Processor (PS-4) that will meet [her] restrictions."

Grievant immediately responded to the denial and requested that the Plant Manager reconsider her request.

On September 22, 1995, the Plant Manager gave Grievant an answer, stating:

The information you provided, and the medical documentation you supplied indicate to me that your need is real and that the restrictions are legitimate.

Unfortunately, this does not change the fact that you are a Mail Processor, PS-4, and cannot perform the duties of a Distribution Clerk, PS-5, without the Postal Service incurring the penalty of higher level pay.

I could accommodate your limitations if you were a PS-5 Distribution Clerk or a PS-6 LSM Clerk, a PS-6 Expediter, etc. There are no duties for a PS-4, Mail Processor that will meet your restrictions.

Sometime thereafter Grievant learned that a TE employee was working in the OCR/BCS area, producing labels, recording times, etc., items of Level 4 work within her Unit. She contacted her Tour Supervisor and notified him that the TE was performing Level 4 work that she could perform within her medical restrictions. In December 1995, Grievant was given a light duty assignment performing this work.

The grievance filed in this matter asks that Grievant be made whole for all wage and benefits lost as a result of the denial of her requests for light duty for approximately a three month period, commencing September 20, 1995, when she was not allowed to clock-in at the start of her Tour.

DISCUSSION

The basic facts on which this grievance turns are not disputed in this record. Accordingly, they need not be visited in any more detail than that noted above. What is at issue here is whether or not Management is obligated under Article 13 to provide an otherwise eligible employee with a light duty assignment when the only available work is in a higher pay level than that of the ill or injured employee's regular assignment. APWU has argued that Article 13 obligates Management to provide an employee with light duty work even if the work is within a higher pay grade. Management has argued that it is only obligated to provide an employee with light duty work that is available within the employee's pay level. And it makes good business sense not to provide light duty work at a higher pay level.

Management is mistaken in its obligations under the Agreement. First off, Article 13, says nothing about limiting a light duty employee to work that is within his own pay level. Such a restriction, were it intended by the parties, would certainly limit the available work opportunities of a large number of employees. Such a restriction would definitely limit the scope of the search for available work, as required by the language, "every effort," in Article 13, Section 4, and also shrink the area of second phase efforts, required by the language "after all efforts are exhausted." And while Management has argued that it makes good business sense not to have lower level employees doing higher level work while on light duty, some would argue that it makes good business sense to have deserving employees gainfully employed while recovering from an off-duty injury or illness.

Fairly read, not only does Article 13 fail to specifically limit light duty to an employee's own pay level, Section 4 requires that after initial efforts are exhausted in attempting to find suitable work within the ill or injured employee's own group or Craft, consideration must be given to reassignment to other Crafts or occupational groups. Assignments to other Crafts or occupational groups could easily involve assignments to different pay levels,

It is believed that on the National Level the parties do not view the obligations imposed by Article 13 in the same restrictive manner that Management of the Des Moines facility view it. On April 8, 1988, the parties at the National Level issued a Step 4 decision in H4T-1E-C 24918, pertaining to:

The issue in this grievance is whether a light duty employee is entitled to higher level pay when performing higher level duties in a light duty assignment.

If Management was proscribed under the Agreement from having employees in light duty assignments perform higher level work, there would have been no need for a Step 4 decision on whether an employee on light duty performing higher level work would be entitled to higher level pay.

Furthermore, Management's position is not supported by arbitral authority, while there are awards supporting the Union's position. One award fits the facts in this matter four square - *N7C-1A-C 22107* (Marx, Arb.,) 1992 - it involves a Level 4 Mail Processor that was denied available light duty work in Level 5 occupations. After reviewing a number of earlier decisions, at least three by National Arbitrators, Arbitrator Marx stated:

Applying the principles set forth in these (and other) Awards, the Arbitrator finds that the Postal Service failed to meet the strong and emphatic language of Article 13 in reference to assigning Barbero to light work. Whether or not assigning him to a limited portion of the duties involved in Level 5 work would have required that he be paid at Level 5 is not the issue. Article 13 repeatedly states the requirement that search for suitable work extend beyond the employee's own assignment. There is no reference to pay level and no distinction (except as to permanent reassignment) as to whether or not the disability is job-related.

As a result, the Arbitrator concludes that light duty work was available for Barbero and that he was improperly required to take sick leave, annual leave, and/or leave without pay during the period of his physical restrictions.

In the instant case, Management says that Arbitrator Marx made a mistake, and cites an award of Arbitrator Robins, in *N7C-1A-C 22109* (1992), denying a grievance involving a dispute in the same installation as that dealt with in *N7C-1A-C 2210*. After excerpting the following from Arbitrator Marx in *N7C-1A-C 2210*:

Article 13 says nothing about limiting a light duty employee to work at a position in his own pay level. ... Article 13 requires a further search for available work outside the employee's "craft" at the same location.

Arbitrator Robins observed that "there is substantial risk in implying a provision because the contract is silent." That risk, this Arbitrator notes, is substantially reduced in so far as this case is concerned, as the parties to the Agreement, at Step 4 in *H4T-1E-C 24918* (supra), have acknowledged that light duty employees have been assigned work in a higher grade level.

Moreover, the obligation placed upon installation heads to make "every effort" to find work for an ill or injured employee would be drastically impeded if such efforts were confined to the employees pay level. This Arbitrator cannot

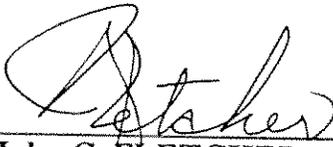
accept that this is the intent of Article 13. See also *N7C-1A-C 32031*, Bello, Arb., (1995) for a similar holding, and *C0C-4P-C 4216*, Stallworth, Arb., (1992), wherein it was observed:

The Service argued that it will not look for light duty in a wage grade higher than the one occupied by the employee seeking light duty. Several arbitrators have noted that Article 13 says nothing about limiting a light duty employee to work at a position in his own pay level.

Accordingly, it must be concluded that the grievance has merit. It must be sustained.

A W A R D

The grievance is sustained. The National Agreement was violated when Grievant was denied light duty work solely on the grounds that all available work within her restrictions was in a higher pay level. Grievant is to be made whole for all wage and benefit losses incurred during the time she was denied assignment to available light duty work.



John C. FLETCHER, Arbitrator

Mount Prospect, Illinois - October 5, 1998