

REGULAR ARBITRATION PANEL

IN THE MATTER OF THE ARBITRATION
BETWEEN

EMPLOYER
UNITED STATES POSTAL SERVICE

AND

UNION
AMERICAN POSTAL WORKERS UNION,
AFL-CIO

Grievant:

Bryon Preminger

Post Office:

Des Moines, Iowa P&DC

Case No:

I94C-1I-C 98021213

BEFORE: GEORGE EDWARD LARNEY

APPEARANCES:

FOR THE POSTAL SERVICE:

JANET S. ADES
Labor Relations Specialist
Hawkeye District

FOR THE UNION:

BRUCE CLARK
President
Iowa Postal Workers Union

PLACE OF HEARING:

1165 Second Avenue
Des Moines, IA 50318

DATE OF HEARING:

SEPTEMBER 27, 2000

DATE OF AWARD:

NOVEMBER 30, 2000

CONTRACT YEAR:

1994-1998

TYPE OF GRIEVANCE:

Contract

AWARD SUMMARY

The Arbitrator finds Postal Service Management did not violate the 1994-98 National Agreement when it determined to disallow Grievant's bid for the posted FSM Operator position in 1997.

Grievance Denied.


GEORGE EDWARD LARNEY
Arbitrator

WITNESSES (in order of respective appearance)

FOR THE EMPLOYER

CAROLINE ROMORE
Human Relations Specialist

ELEANOR WILLIAMS */
Manager, Personnel Services

FOR THE UNION

BRYON PREMINGER
Level 4 Mail Processor-
Flat Sorter Area & Grievant

BARBARA WILSON
Mail Processor-Automation
& Union Steward

ISSUE

At the hearing, the Parties stipulated to the following issue as being properly before the Arbitrator for resolution on the merits:

Did Postal Service Management violate the 1994-98 National Agreement (Jt. Ex. 1) when it denied a Flat Sorter bid to Bryon Preminger, the senior bidder and the Grievant herein?

If so, what shall be the proper remedy?

RELEVANT DOCUMENTATION

I. APPLICABLE CONTRACT PROVISIONS (Jt. Ex. 1)

- §§19 and 37

II. SEPTEMBER 1, 1987 MEMORANDUM OF UNDERSTANDING (MOU)
[Jt. Ex. 3]

- Sections IA, IB IC, and ID.

*/ Testimony rendered by conference telephone call.

BACKGROUND

Bryon Preminger, hereinafter Grievant, commenced his employment with the Postal Service May 7, 1988 as a Part-time Flexible (PTF) Flat Sorter Machine (FSM) Clerk, Level 5. Approximately eighteen (18) months later, in and around late 1989/early 1990, Grievant was awarded job bid to outgoing mail and was converted to Full-time Regular (FTR) status. Grievant remained in this position in the Outgoing Mail section for approximately 5 1/2 years at which time he returned to the position of Flat Sorter Machine (FSM) Clerk, Level 5 for at least a year. Grievant then bid down to a Level 4 Mail Processor position in Automation and assumed this position as of June 8, 1996.¹ The Automation section consisted of twelve (12) Delivery Bar Code Sorter (DBCS) machines, five (5) Input Sub-system (ISS) machines, and five (5) Output Sub-system (OSS) machines. According to Grievant on any given scheduled day of work, he could be assigned to operate any one of these three (3) types of machines. However, during the first year in Automation, Grievant noted, he was predominantly assigned to work the DBCS machines explaining that this was due to the fact that there were twice as many DBCS machines as there were ISS or OSS machines. Grievant asserted that after working in Automation for about one (1) year, he developed a nerve problem in both arms that made it difficult for him to perform the duty of repetitive tight grasping which is a requirement of performing work on all three (3) types of machines.² According to Grievant, the task of grasping is worse while working on the DBCS machine simply due to the vast number of times during an eight (8) hour tour of duty one has to grasp the mail while performing the duty of sweeping the stackers.³ With

¹ Grievant explained his motive for bidding down was that for the first eight (8) years he was employed, he had Wednesday and Thursday as his off-days and he longed to have a weekend off-day. The off-days for the Automation Level 4 position he bid and was awarded were Thursday and Friday.

² According to Grievant, the specific malady he developed was inflammation of the ulnar nerve known as tendinitis and more commonly referred to as tennis elbow. Grievant explained the problem originated in his left arm and then developed in his right arm as well. Grievant further explained the condition in his left arm is worse than it is in his right arm recounting he has had three (3) cortisone shots to address the pain he feels in his left arm while he has had only one (1) cortisone shot to address the pain in his right arm.

³ According to Grievant, there are up to 250 stackers on each DBCS machine and during an eight (8) hour tour, which entails rotation between the duties of loader and sweeper usually every two
(continued...)

respect to the task of grasping on the OSS machine, Grievant noted there are two (2) levels of trays and it is necessary to grasp the mail in the trays but especially the top level tray. As to the task of grasping entailed in operating the ISS machine, Grievant noted the worse problem encountered is the jams that occur which require intense grasping to clear the machine.⁴ In and around the latter part of March, 1997, just nine (9) months after he bid into Automation, Grievant submitted medical documentation to Lead Plant Manager, John J. Dooley, requesting restrictions of no grasping with left hand, or extension or flexion of the elbow more than 5 minutes at a time for a 3 week period. In a letter dated March 28, 1997, Dooley acknowledged receipt of Grievant's medical documentation and informed Grievant that he, in turn, would submit the documentation to the Postal Service Physician for his review and recommendations. In the meantime, Dooley apprised Grievant that pending receipt of those recommendations, he would temporarily accommodate his restrictions in his bid assignment (Automation) in Pay Location 333. Dooley further informed Grievant that his temporary light duty would be terminated at the end of tour on April 14, 1997 unless he received further medical documentation indicating an extension was necessary prior to the termination date (Un. Ex. 2).⁵ Dooley also apprised Grievant that if he felt his limitations would not allow him to perform his bid assignment, and his light duty assignment was not extended, he could elect to utilize his sick leave. In the event he exhausted his sick leave, he had the option to utilize annual leave. And, in the event he exhausted his annual leave, he could elect to take Leave Without Pay (LWOP). Subsequently, Grievant made a formal request to Dooley to extend his light duty assignment beyond April 14, 1997 and by a Memorandum dated April 16, 1997 (Un. Ex. 3), Dooley acknowledged Grievant's request for said extension through April 24, 1997, a time frame within which he (Grievant) was scheduled to have a review of his physical state of being with his physician. Dooley informed Grievant he would honor his request for the extension and that he (Grievant) would continue to work his then present assignment (see fn. 5, supra).

³(...continued)

(2) hours, it is possible to perform the act of sweeping which involves removing processed mail from stacker, literally a thousand (1,000) times.

⁴ Grievant related that on one occasion, the intense grasping he performed in clearing a jam on the ISS machine was of such magnitude that it caused him great agony, sending him in tears and resulting in his going home.

⁵ Grievant testified that whenever he was placed on light duty, his assignment was culling mail.

The record evidence reflects that on April 23, 1997, one day prior to the expiration of Grievant's light duty assignment, Postal Management put up for bid a number of clerk and operator positions at Des Moines P&DC and MPO installations in Posting No. CL 9704, one of which was the position of Flat Sorter Machine Operator with days off of Thursday/Friday (Jt. Ex. 4). Grievant testified he bid this particular position among those posted (Job ID 8192637) for several reasons, to wit: (1) he viewed returning to the position of FSM Operator as a way of addressing the physical maladies he had developed as a result of working on the machines in the Automation section; (2) he would be able to retain his days off of Thursday/Friday; and (3) he would be able to regain Level 5 pay which he gave up by bidding into the Level 4 Automation position. The record evidence reflects that Grievant, as the senior bidder of this position, was tentatively awarded the job "pending medical documentation." According to a Memorandum of Understanding entered into by the Parties on September 1, 1987 (Jt. Ex. 3), an employee, temporarily disabled, such as Grievant on light duty, is allowed to bid for and be awarded a preferred bid assignment provided the employee will be able to fully assume the position within six (6) months from the time at which the bid is submitted. According to another provision of this 1987 Memorandum, Management has the option at the time of submission of the bid or, at any time thereafter, to request that the employee provide medical certification indicating that the employee will be able to fully perform the duties of the bid-for position within six (6) months of the bid. If the employee fails to provide such certification, the bid shall be disallowed, and, if the assignment was awarded, the employee shall become an unassigned regular and the bid will be reposted. Furthermore, under such circumstances, said employee shall not be eligible to re-bid the next posting of that assignment. Another provision of this Memorandum provides that, if at the end of the six (6) month period, the employee is still unable to fully perform the duties of the bid-for position, Management may request that the employee provide new medical certification indicating his/her ability to fully perform the duties of the bid-for position within the second six (6) months after the bid. If the employee fails to provide such new certification, the bid shall be disallowed and the employee shall become an unassigned regular and the bid will be reposted. Under such circumstances, the employee shall not be eligible to re-bid the next posting of that assignment.

Caroline Romore, a Human Resources Specialist in Personnel since 1991, testified she has worked with the job bidding process since 1997. Romore explained that when job bids are closed after having been posted for seven (7) days, she compiles a list of all the senior bidders for the various jobs posted and she then proceeds to personally review the list to determine if any of the senior bidders are on light duty and she also forwards this list of senior bidders to Injury Compensation for their request to determine if any of the senior bidders are on limited duty due to medical

restrictions. In the instant case, after the subject job posting was closed (the seven day posting period was April 23, 1997 through April 30, 1997), Romore related that as part of determining the eligibility of the senior bidders for the posted positions, she reviewed the light duty log dated April 24, 1997 for employees in the plant and found that Grievant was listed on the log as having the restriction of "no grasp[ing] with left hand" with the notation in the column denoting "end light duty" (ELD) of "permanent" followed by a question mark (Emp. Ex. 3).⁶ As a result of finding Grievant on the light duty log, Romore testified that, in accordance with the September 1, 1987 Memorandum of Understanding (Jt. Ex. 3), she prepared a letter to Grievant dated May 2, 1997, which was signed by Senior Human Resources Specialist, Eleanor B. Williams (Romore's superior in the chain of command) wherein, Grievant was notified that Postal Records indicated he was currently on light duty and that while this status allowed him to bid the FSM Operator position and be designated the senior bidder for said position, such designation was contingent on his being able to assume the position within six (6) months.⁷ The letter further informed Grievant it was his responsibility to provide current medical documentation which clearly indicates his ability to fully perform the duties of the bid position within the stated six (6) month time period. Grievant was apprised his medical documentation had to be received by Human Resources Associate, Becky S. Streeter, no later than 14 days from the date on the letter (which was May 16, 1997 as the letter was dated May 2, 1997) and was warned that if he failed to provide the required documentation within this allotted fourteen (14) day period, his bid for the FSM Operator position would be disallowed and he would then remain in his current position (meaning his Level 4 Automation

⁶ The Arbitrator notes that the date of this light duty log, April 24, 1997, was the same date Dooley had extended Grievant's light duty assignment through. Although the record evidence is imprecise as to Grievant's status after April 24, 1997, the Union maintained in this arbitral proceeding that when the subject job posting was closed on April 30, 1997, Grievant was no longer on light duty (see Un. Ex. 1).

⁷ Romore explained that during the six (6) month period given employees to assume the posted and bid-for position, said position is held in limbo and is performed by part-time flexibles, casuals and unassigned regular employees. During this six (6) month period, the employee in question, that is, the senior employee who bid the posted position but is not able to assume the job due to light duty restrictions, is the holder of two (2) bid positions. Romore then explained as to what occurs if said employee is unable to assume the bid-for position after the end of the six (6) month period and, after the end of the second six (6) month period per the September 1, 1987 Memorandum provisions as already discussed elsewhere above.

assignment).⁸ Grievant was further apprised that if his bid was disallowed, he would not be eligible to re-bid the next posting for the FSM Operator job.⁹ The letter ended by informing Grievant if he had any questions regarding the documentation he was required to submit, he should call the Human Resources Office.

In response to Williams' directive to submit current medical documentation relative to his bid for the posted FSM Operator position, Grievant testified he made a visit to his physician, Dr. Bret McFarlin, who told him that if he continued performing his job in Automation he would have to resign his employment at the Postal Service. Since he told Dr. McFarlin that the FSM Operator position did not involve intense grasping as required by his Automation position, Dr. McFarlin provided him with a medical note dated May 15, 1997, signed by McFarlin's assistant, Peg Kunze, which read in whole as follows:

Patient has no left elbow pain at this time. New job function **should not** bother arm since it is different movement. (Emphasis, the Arbitrator)

(Un. Ex. 5)

The record evidence reflects that at the same time Grievant obtained this note from Dr. McFarlin, he also secured a FMLA Certification, also signed by McFarlin's assistant, Peg Kunze, for the purpose of supporting his request for light duty which had ended as of April 24, 1997, the extension date authorized by Dooley in his April 16, 1997 letter to Grievant (Un. Ex. 3). In this Certification (Un. Ex. 6), it was noted that Grievant's medical condition was that he had tendinitis in his left arm but had reduced pain and limited physical activity and, that this condition

⁸ In acknowledging that the September 1, 1987 Memorandum does not, in any provision, make reference to this fourteen (14) day period within which an employee is given to submit the requisite medical documentation, Romore asserted the fourteen (14) day deadline period is a feature of local policy and, Eleanor Williams, an employee with 36 years of service and Manager, Personnel Services since 1992, testified said local policy has been in effect for many years. Additionally, Williams averred, the Union has never indicated it had a problem with this fourteen (14) day time frame as this policy has never been grieved.

⁹ Romore explained that in the event the employee so notified of the requirement to submit medical documentation fails to do so within the allotted fourteen (14) day time frame, then the posted position in question is awarded to the next senior bidder.

had commenced as of September 21, 1996.¹⁰ As to the probable duration of his tendinitis, it was noted it would occur whenever he engaged in the motion required of an OCR Operator and he would be required to be off from work intermittently depending on the degree of pain. As to the question of whether his chronic condition of tendinitis caused him presently to be incapacitated and the likely duration and frequency of episodes of incapacity, the response noted was, "unknown." On the question as to whether Grievant was able to perform the functions of his position, the answer given was "no", expounding that he was not to do grasping or, left hand flexion or, gripping for no more than x amount of minutes at a time.¹¹ Grievant explained that his motive for obtaining the FMLA documentation which he submitted directly to Dooley in conjunction with his request for light duty was to protect himself from performing his OCR assignment until he received approval to assume the FSM Operator position he had been awarded as the successful bidder. Grievant related that after obtaining the required medical documentation he was requested by Williams to submit, he personally handed said documentation to Becky Streeter in Human Resources on the following day, May 16, 1997, the fourteenth and final day of the deadline date referenced in Williams' May 2, 1997 letter (Un. Ex. 4).

By letter dated May 22, 1997 (Un. Ex. 7), Lead Plant Manager, Dooley, informed Grievant he would not consider his request for light duty as the medical information he submitted (apparently referring to both the FMLA Certification and the note from Dr. McFarlin) was not consistent with the medical information he had submitted in the past. Dooley went on to state the following:

You state that you can work in an FSM position with no pain but cannot work on the OCRs. I am unable to determine exactly why the motion on the FSM would be different than the motion that you currently cannot do as a mail processor working at the OCRs. There is no

¹⁰ The Arbitrator notes that the date of September 21, 1996 as the date of the onset of Grievant's tendinitis condition conflicts with Grievant's testimony that it was approximately a year after he assumed the Level 4 position in Automation that he developed the arm problems due to the intense grasping he had to perform when working on the machines in Automation. If the September 21, 1996 is indeed a more accurate date as to the onset of his medical problem, then his problem was first evidenced 3 1/2 months after he assumed the bid assignment in Automation and not a year later as he earlier testified. According to Grievant, he commenced his assignment in Automation as of June 8, 1996.

¹¹ The information pertaining to the gripping limitation on the Certification was unreadable in the reproduction of the document.

indication that your physician has enough information to determine the difference between the work performed on an OCR/BCS and the work performed on a Flat Sorting Machine.

(Un. Ex. 7)

In response to Dooley's letter to him of May 22, 1997 (Un. Ex. 7), Grievant took strenuous objection to Dooley's accusation his physician (Dr. McFarlin) had provided the Postal Service with medical documentation that demonstrates a lack of knowledge on his part of the physical functions necessary to perform the various job descriptions. Grievant then proceeded to provide a detailed account to Dooley of his medical problems and physical condition. Grievant related that approximately around September 19, 1996, he began experiencing shooting and throbbing pain in both his arms -- that, at first, the pain was moderate to severe in his left arm and minor to moderate in his right arm. Grievant further related that as his condition remained constant, he went to the Emergency Room at Broadlawns Hospital, worried he might have a serious ailment. Grievant apprised he was referred first to physical therapy and then to occupational therapy and further testing revealed a severe loss of strength in his left arm and a moderate loss in his right arm. Grievant continued, stating that he had occupational therapy twice a week which entailed ultra sound treatments and exercises to increase both his arm and gripping strength. Grievant related to Dooley he was informed he had tendinitis in both shoulders, which caused him to have bouts with tennis elbow, shoulder pain, and arm and hand pain associated with gripping. Grievant noted he was prescribed medication and took a two (2) week hiatus from working during which time, he proclaimed, he made remarkable progress with strength returning to his arms and with pain kept to a minimum using medication and arm supports. Grievant explained that given the progress he had made, he was told that the source of his physical condition was probably his job in Automation. Grievant also was informed that a Worker's Compensation claim had to be filed within thirty (30) days of the injury but, as two (2) months had elapsed from the time he injured himself he did not file a Worker's Compensation claim as such a claim seemed to him in light of the 30 day limitation to be a moot point. According to Grievant, his arms continued to improve and, as a result, he was able to end his therapy sessions and return to full duty albeit, wearing arm supports as a precautionary measure. Grievant reported to Dooley that in January and February of 1997, he suffered a complete relapse and the pain in his arms were more severe than the first time. As a result, Grievant related, he resumed occupational therapy and taking medication. Grievant asserted his condition was aggravated by the continuous clutching and grabbing which are integral movements of operating a DBCS and, that he became unable to last an entire shift which involved grabbing hundreds, if not thousands of bundles during the course of a night. Grievant also claimed in this letter to Dooley that the clutching and pulling motion necessary to sleeve letter trays also became unbearable.

Grievant informed Dooley that after an extended period of time off from work, coupled with therapy and medication, his arms began to feel better. However, his physician, convinced his condition was permanent and would only continue to be aggravated by his present job and cause another relapse, kept him on physical restrictions. Grievant explained that his doctor's approval for him to assume a Flat Sorter bid was based on his (Grievant's) expertise of the job requirements needed to successfully work as a FSM Operator noting that the FSM job does not entail any excessive, repetitive clutching or grasping. Grievant asserted that two-thirds of a shift on the FSM requires ten-keying with the right hand, while using a plastic thumb on the left hand to flip the flat into the entry window of the console. Grievant maintained the repetitive motion in operating the FSM in this aspect of the job involves the wrist whereas, the other one-third of the work entails loading ledges which does not involve any clutching and tying out an occasional flats tub when needed which is infrequent. Grievant averred that picking up the lid off a pile when lidding a flats tub is the only true grasping done during this job function (Un. Ex. 8). Barbara Wilson, an employee with fifteen (15) years service, a Mail Processor in Automation since August of 1996 and, a Union Steward, testified that there is no small grasping involved when operating a Flat Sorter Machine because the mail being processed consists of large pieces (see Un. Ex. 14).

Notwithstanding this exchange of correspondence between Grievant and Dooley regarding the issue of light duty eligibility, independently, Manager, Personnel Services, Eleanor Williams made a determination that the medical note Grievant submitted to Streeter on the deadline date of May 16, 1997 was insufficient in that it failed to indicate whether he would be able to fully perform the duties of his bid-for FSM Operator position within the provided-for six (6) month period. In addition, the record evidence reflects that Williams was informed by Dooley of Grievant's submission of the FMLA Certification he submitted to Dooley and that she discerned from the information contained in the Certification that the limitations referenced therein, which indicated he was physically unable to perform the duties on the OCR, were limitations that also restricted him from performing duties on the FSM.¹² As a result, Williams denied Grievant his bid

¹² In a handwritten note dated June 12, 1997 Grievant submitted to the Union (Un. Ex. 10), Grievant reported that on June 11, 1997, he had a telephone conversation with Williams wherein Williams related to him confidential medical documentation specifically, the restriction indicated on his FMLA Certification (Un. Ex. 6), "flexion, grasping" which was information that was known only to Dooley and his Tour Superintendent. Grievant claimed Williams' knowledge of this medical information constituted a violation of the Privacy Act and said claim resulted in the filing (continued...)

for the FSM Operator position.

Notwithstanding Williams' decision to deny Grievant his FSM Operator bid, Dooley informed Grievant by Memorandum dated June 6, 1997 (Un. Ex. 9), that it would be necessary for his doctor to provide information that indicates that the work he would be able to perform on the FSM would not aggravate his injury. Dooley stated further he would allow Grievant's physician to visit the plant facility (Des Moines, P&DC) to observe the difference between the Flat Sorter Operation and the OCR/BCS Operation so he could make an informed assessment of his (Grievant's) capability to perform FSM operation duties. Dooley then advised Grievant he could return to work and take a FSM bid as soon as there is adequate medical documentation that he could perform the duties of that position without further aggravating his current condition.¹³

¹²(...continued)

of a grievance on July 5, 1997. In pertinent part, the grievance asserted that Williams told Grievant that Dooley had given her the FMLA Certification form. The Union contended Dooley had violated the Privacy Act on grounds that confidential medical information is not supposed to be given to someone who has no reason to be reading it. The remedy requested by the Union was as follows:

That the FMLA document only be used by Dooley to determine if Grievant is to be awarded a light duty assignment and that it be inadmissible in determining Grievant's ability to assume his Flat Sorter bid.

The record evidence reflects that this grievance was sustained by Supervisor, Jody Paullin, at Step 1 on date of July 11, 1997 (Un. Ex. 10).

¹³ It is unclear whether at the time Dooley wrote this Memorandum to Grievant, which was in response to Grievant's May 31, 1997 Memorandum to him regarding his request for light duty (Un. Ex. 8), that Dooley was aware that Williams had already determined that the medical documentation submitted by Grievant to Human Resources was not adequate and, as a result, his bid for the FSM Operator position had been denied. However, regardless of Dooley's state of knowledge, the testimony proffered by both Williams and Romore made quite clear that the decision to deny Grievant the FSM Operator bid in question would stand as there was no opportunity for Grievant to remedy the situation. Romore explained that an employee similarly situated to Grievant is given fourteen (14) days within which to provide the required medical documentation and if said employee, like the Grievant here, submits medical documentation on the fourteenth day and it is found not to provide the required information, then that employee is not given

(continued...)

The record evidence reflects that on June 12, 1997, Local Union President, Lance Coles, sent an e-mail to Williams wherein he apprised that Grievant was being denied his FSM Operator bid and, at the same time, he was currently not being allowed to work in the OCR Section due to his restriction. Coles then quoted Dr. McFarlin's medical note asking Williams wasn't that enough information to indicate Grievant could perform the functions of the bid FSM Operator position, adding that, Grievant was willing and able to assume his FSM bid and work (Un. Ex. 11).¹⁴ Three (3) days later, Williams responded to Coles' e-mail with a return e-mail wherein, she advised Coles to ask Grievant to provide him with a copy of the other medical statement (an oblique reference to the FMLA Certification) he submitted on the same date (a reference to May 16, 1997). Then with more specificity, Williams informed Coles that the FMLA Certification Grievant had submitted stated he was

¹³(...continued)

additional time to remedy the deficiency. In Grievant's case, Romore testified, the medical note provided to Human Resources did not state that Grievant was able to perform the FSM Operator position at the time he bid the position or, would be able to perform the duties of the position within the provided for six (6) month period. Williams, in her testimony, made the identical claim, that the medical note in question (Un. Ex. 5) failed to state that Grievant was able to do the job. Williams noted more specifically that the note read, "new job function **should not** bother arm since it is different movement," when the note should have read, **will not** bother arm Under cross-examination, Grievant admitted that the medical note he submitted to Human Resources while it does not reference restrictions, it does not state he could perform the FSM Operator position within six (6) months. Romore testified that had Grievant submitted the note prior to the deadline date in enough time to remedy the deficiency, Human Resources would have notified Grievant of the deficiency in order to afford him such an opportunity. Williams, on the other hand, testified to the contrary explaining that because the letter she sends to employees, like the Grievant, is explicit and clear as to what medical documentation is required specifically, "**current medical documentation which clearly indicates you will be able to fully perform the duties of the bid position within the time period [and] if you fail to provide the required documentation, the bid will be disallowed and you will remain in your current position**" (Un. Ex. 4), the employee is not permitted an opportunity to remedy deficient medical documentation.

¹⁴ It is recalled that the date Coles sent this e-mail to Williams is the same date that Grievant informed the Union in writing of his telephone conversation with Williams the day before, June 11, 1997, wherein Grievant alleged Williams was in possession of confidential medical documentation she should not have known about (Un. Ex. 10).

physically unable to perform the duties on the OCR and that these very same limitations also restricted him from performing duties on the FSM (Un. Ex. 11).¹⁵

Grievant testified that as a result of being denied both his request for light duty and his FSM Operator bid, and his need to return to work to earn a living, he obtained medical documentation on June 18, 1997, from his physician at Broadlawns Medical Center directed to, To Whom It May Concern, which stated he was no longer on FMLA restrictions and he could return to full duty status immediately without restrictions (Un. Ex. 12). Grievant testified that the effect of submitting this medical release was that basically he was risking his body to secure the FSM Operator bid which, as it turned out, was awarded to the second senior bidder two (2) weeks later, on July 2, 1997. The record evidence reflects that by e-mail dated June 20, 1997, Coles apprised Williams that Grievant had dropped off the medical release to return to work to full duty without restrictions to her and asked, if this was so, would he be placed into the FSM bid, stating, Grievant would like to assume the FSM Operator position on Saturday (Emp. Ex. 1). In response by e-mail dated June 20, 1997, Williams informed Coles that Grievant had called her that very day to inquire whether or not she had received some additional medical information he had brought in on June 18, 1997 and that she apprised him she had not received said medical information. Williams further informed Coles she had advised Grievant in this same conversation that any medical information provided her on June 18, 1997 would not be timely (see fn. 13, supra). Grievant testified he returned to work in the Automation section and not long afterward, he reinjured himself and was off from work on LWOP.¹⁶ According to Grievant, from January

¹⁵ The Arbitrator notes that Williams' response in this e-mail dated June 15, 1997, confirmed Grievant's claim that Williams was in possession of the FMLA medical documentation he had provided to Dooley and his Tour Superintendent. Apparently, it was this confirming documentation that resulted in Grievant's Privacy Act grievance being sustained at Step 1 (Un. Ex. 10). (See fn. 12, supra).

¹⁶ Grievant explained he took off from work on LWOP because, at first, he was ignorant of the "system" and the option available to him of filing a Worker's Compensation claim. Additionally, Grievant explained, his Orthopaedist refused to be a party to a Worker's Compensation claim and just did not complete the required paperwork. Grievant testified that even though Management questioned his being released to full duty without restrictions, they never sent him for a fitness-for-duty examination. According to Grievant, he asked Management repeatedly to be examined by a Postal physician since his own physician would not deal with a Worker's Compensation claim, but his requests were denied on
(continued...)

1997 up to August 1997, he had earned only Eight Thousand Dollars (\$8,000.00).¹⁷

In other testimony, Grievant related that his entire situation revolving around losing his bid for the FSM Operator position motivated him to seek a Union Steward job which he assumed in October of 1997, three (3) months after his FSM bid position was awarded to the second senior bidder. In and around this same three (3) month period (July to October, 1997), Grievant testified he negotiated an arrangement with a number of his co-workers in the Automation Section whereby they agreed not to rotate duties with him when it came time for him to perform the duty of sweeping as it was this part of the job that involved the tight grasping motion that led to his chronic tendinitis condition.¹⁸ As a result of this arrangement with his co-workers and the fact that he spent, on average, thirty (30) hours of his forty (40) hours per week on Union business, meaning he only spent the remaining ten (10) hours per week actually working his bid position in Automation, most of which involved the duty of feeding as opposed to sweeping, Grievant explained the urgency to bid out of Automation and into a FSM Operator position greatly diminished after October of 1997.¹⁹

¹⁶(...continued)

grounds he had seen his own physician first and therefore was stuck with his decision. Grievant asserted that at the time he did not know he could have seen a Postal physician first and then initiated an injury claim with the Office of Workers' Compensation Programs (OWCP).

¹⁷ Grievant related he was so distraught and feeling so jacked around that he resorted to writing Iowa Senator, Tom Harkin, about his problem. According to Grievant, Harkin's office made an inquiry as to his situation and then informed him there was nothing the Senator could do for him, that he would have to wait to have his day in court (meaning this arbitration). Grievant related that at this point in time, he was on the verge of having to resign his employment from the Postal Service.

¹⁸ As noted in fn. 3, supra, rotation of the two (2) basic automation job duties of loader and sweeper usually occurs within a time frame every two (2) hours (see Un. Ex. 13). Grievant related that he did perform the duty of sweeping on some occasions due to the fact that some co-workers refused to suspend the general procedure of alternating between feeding (loading) and sweeping. However, Grievant asserted, he also devised a different method of sweeping that involved less grasping and, in addition, he taught others in the Automation section this new sweeping technique.

¹⁹ Grievant noted that as a Tour 3 employee his regularly scheduled working hours were 3:00 p.m. to 11:30 p.m. Grievant explained that he would commence his tour of duty by working the
(continued...)

Notwithstanding the various measures he took to cope with his situation of being stuck in a "twilight zone" of having been denied light duty and denied his FSM Operator bid and not filing a Worker's Compensation claim based on his condition of tendinitis, Grievant related he still incurred a total of about eight hundred (800) hours of LWOP in all of 1997. In his testimony, Grievant opined that his FSM Operator bid was denied by Management for two (2) interrelated reasons, to wit: (1) his physician failed to be precise in the wording of the medical documentation he presented to Human Resources pursuant to its request for such documentation; and (2) Management incorrectly determined that said medical documentation conflicted with the information that was noted on the FMLA Certification he submitted to Dooley in support of his request to Dooley to approve a continuation of his light duty assignment. Grievant maintained that the medical documentation supporting his bid for the FSM Operator position and the medical information noted on his FMLA Certification supporting his request for light duty should have been treated by Management independently of one another as said documentation was intended for two (2) very different and separate purposes. Grievant testified he bid his present position as a Level 4 Mail Processor in the Flat Sorter area on Tour 3 with Friday and Saturday as off-days which resulted in his leaving the Automation section in July of 1999.²⁰

As a result of being denied his FSM Operator bid, the Union, in Grievant's behalf filed a timely, but undated grievance alleging Postal Management violated Articles 19 and 37 of the National Agreement (Jt. Ex. 1) as a result of its denial action and seeking as a remedy that he be made whole for all lost wages at all the

¹⁹(...continued)

first two (2) hours on the OCR machines and then after 5:00 p.m., he would be released to engage in Union business for the remaining six (6) hours of the tour. Grievant noted the amount of time he engaged in Union business per week was due to the fact that, at the time, there were only two (2) Union Stewards (himself and another employee) on Tour 3. Grievant also asserted the urgency to bid out of Automation diminished greatly as a result of teaching himself a new technique of grasping on those occasions he had to perform the duty of sweeping (see fn. 18, supra).

²⁰ Grievant acknowledged that other bids for FSM jobs he was eligible to bid on were posted as early as July of 1997 but none were on Tour 3, his preferred tour. Caroline Romore testified that Tour 3 FSM Operator positions were posted as recently as March of 2000 but that Grievant did not submit a bid for any of these positions.

applicable rates from the date of May 24, 1997 until the present (Jt. Ex. 2, p. 7).²¹

As the Parties were unable to reach a mutually satisfactory resolution of the subject issue in dispute at the preceding lower steps of the grievance procedure, the matter comes now before this Arbitrator for a final and binding determination.

CONTENTIONS

UNION'S POSITION

The Union submits the circumstances surrounding the instant case presents the threshold question of whether Management properly subjected Grievant to the medical documentation requirements set forth in the September 1, 1987 Local Memorandum of Understanding (LMOU) (Jt. Ex. 3) by treating him as an employee on light duty when his light duty status officially ended on April 24, 1997, six (6) days prior to the close of the FSM Operator position that was posted and successfully bid by the Grievant. But even assuming arguendo Grievant was still on light duty status during the critical time periods involved here, the Union argues he nevertheless complied with the medical documentation requirements of the LMOU that were imposed on him. Even though Grievant's physician was intransigent relative to his obstinacy of supporting the filing of a possible Worker's Compensation claim by Grievant, nevertheless, he was supportive of Grievant's effort to secure the FSM Operator job after Grievant, based on his prior experience and expertise as a FSM Operator, demonstrated to his physician that the physical motions involved in performing the FSM Operator's position were different than those required to perform the OCR position and, that these different physical motions/movements but, in particular

²¹ Given the lapse of time involved in progressing this subject grievance to arbitration, the Union, at hearing, amended the remedy by placing an ending time frame as to the period it contends Grievant is entitled to be made whole for lost wages. That ending time, according to the Union, occurred after October 15, 1997, the date Grievant assumed his Union Steward position, till sometime in December of 1997, when the Grievant passed up bidding on a FSM Operator posted position on Tour 3 he was eligible to bid on. The Union further clarified the remedy it seeks by noting that it is also requesting the difference between Level 4 and Level 5 pay for the period of time Grievant was forced to take LWOP as a result of being denied his request for light duty work.

grasping motions, would not cause him any further harm with respect to his chronic condition of tendinitis. The Union argues that the LMOU is devoid of any requirement with respect to the fourteen (14) day time limit for submission of the requested medical documentation and, further, that there is no requirement as to acceptable wording used by a physician in providing said requested medical documentation. In this respect, the Union asserts, Management acted arbitrarily and capriciously by imposing such requirements on Grievant in the case at bar noting that, Management will bend the absolute fourteen (14) day time limitation if an employee encounters a problem making a timely appointment to see his/her physician to secure the requested medical documentation but, if an employee complies with the time limit, such as the Grievant did here, and the note is not deemed by the Management powers to be as adequate/sufficient, here a matter of one word, specifically will instead of should, Management adopts the absolutist position of not affording the employee the opportunity, even if there is sufficient time left before the fourteen (14) day timelimit occurs, to remedy the deficiency in the language used by the physician in the medical documentation provided. Additionally, Management acted capriciously and in violation of Article 13, Section 2B of the National Agreement when it refused Grievant's request(s) to submit himself for a fitness-for-duty request in his effort to secure a continuing light duty assignment.

The Union submits that Williams, who possesses no qualifications relative to medical matters, such as the situation pertaining to Grievant's physical state of being and his work performance capabilities, nevertheless took it upon herself to countermand Grievant's physician who, with knowledge of the physical motions of a FSM Operator as gleaned from the expertise of the Grievant stemming from his having performed the FSM Operator position in years past, stated without any equivocation in the medical note he furnished Grievant that, the new job function (meaning the FSM Operator position) should not bother [his] arm since it is [a] different movement. The Union argues that in addition to countermanding qualified and expert medical opinion that Grievant was physically capable of assuming the FSM Operator bid position, she also took it upon herself to widen the scope of her reviewing authority in making the determination to deny Grievant's FSM Operator bid by considering the FMLA Certification Grievant submitted to Dooley, even though, she knew full well, that the purpose of the FMLA Certification was to support Grievant's request for a continuation of a light duty assignment whereas, the medical documentation she had requested Grievant submit to Human Resources was for the limited and specific purpose of informing Management he was capable of assuming the bid-for FSM Operator position either immediately or within the provided for six (6) month period. The Union submits that Williams' decision to deny Grievant's bid for the FSM Operator position constituted a wholly improper action which impacted adversely on Grievant to the point of causing him to seriously contemplate resigning his employment from the Postal

Service because of a near impossibility for him to earn a sufficient income, noting that in 1997, he was forced to take eight hundred (800) hours of LWOP. The best evidence that Williams' decision was also a wrong decision aside from the reality it was improperly made, is the fact that for the last year, Grievant has performed FSM duties without encountering any medical problems.

Given that Williams exceeded her reviewing authority and, as a result, made an improper decision to deny Grievant his bid for the FSM Operator position in question and too, given that Management violated the National Agreement by failing to honor Grievant's several requests to be given a fitness-for-duty examination by a Postal physician, the Union requests the Arbitrator to sustain the subject grievance in its entirety and to award the amended remedy advanced in this arbitral proceeding to make Grievant whole for all lost wages.

EMPLOYER'S POSITION

The Employer argues that even if a threshold argument existed regarding whether or not Grievant was still in a light duty status when he bid for and was awarded the FSM Operator position contingent on his proffering specific medical documentation requested by Management, this argument was never before asserted by the Union at any preceding step of the grievance procedure and, therefore, the Arbitrator should dismiss said asserted position on grounds that it constitutes wholly new argument. Additionally, even though the fourteen (14) day time limitation is not specifically referenced and included in the September 1, 1987 LMOU, it is nevertheless an established local practice associated with the LMOU that has never before been challenged by the Union and, therefore, the Union's claim said time limitation is arbitrary should be dismissed by the Arbitrator on grounds said time limit is a firmly entrenched past practice that has heretofore always been accepted by the Union.

The Employer submits that the majority of argument raised by the Union is merely obfuscation of the simple truth presented by the whole of the record evidence and that truth is, that the medical note proffered by Grievant in response to Williams' request to Grievant to proffer medical documentation to support his bid for the FSM Operator position was insufficient and inadequate in complying with the information that was requested to be furnished. The Employer argues that Williams' letter of May 2, 1997 made abundantly clear to Grievant that it was his responsibility to provide current medical documentation which clearly indicates he would be able to fully perform the duties of the bid position (FSM Operator position) within the time period (6 months) and if he

failed to provide the required documentation, the bid would be disallowed and he would remain in his current position. The documentation that Grievant submitted stated, "Pt has no L elbow pain at this time. New job function should not bother arm since it is different movement." The Employer argues this medical note is deficient in that it fails to state with certainty that Grievant would be able to fully perform the duties of the bid-for position nor did it state he would be able to assume the position within six (6) months. Even assuming arguendo Williams had knowledge of the information contained on the FMLA Certification Grievant submitted to Dooley, this fact does not negate the reality that the medical documentation Grievant tendered to Human Resources was deficient in the aspects so noted and that Williams relied solely on said medical documentation in disqualifying Grievant for his bid. While the Union asserts that Management acted capriciously in not affording Grievant the opportunity to remedy the medical documentation submitted to Human Resources, the Employer argues in its defense that Williams' letter to Grievant of May 2, 1997 put Grievant on notice that he had fourteen (14) days within which to submit the required requested medical documentation and that by submitting said documentation on the very last day of the time limitation, that is, on the fourteenth day, the Grievant himself precluded any opportunity he may have had for any additional time to make a more proper submission. The Employer argues, contrary to the protestations of the Grievant, that the motion or movement of grasping which Grievant claimed in support of his request for light duty was the root cause of his medical problem, is common to working on both the OCR equipment and also on the FSM machine which just constitutes additional information in support of the proposition that Management's ultimate decision to disqualify Grievant from his bid for a FSM Operator position was justified and proper. The fact that Grievant would subsequently submit a medical note in total contradiction of the claimed medical restrictions noted on his FMLA Certification just a month after he submitted said FMLA Certification releasing him from all FMLA restrictions and a return to full duty status without restrictions is proof positive, the Employer asserts, that Grievant was prepared to do and say anything in an attempt to secure the subject bid for position of FSM Operator, notwithstanding the fact that the medical documentation he submitted to Human Resources was deemed by Management to be insufficient and inadequate. The Employer notes that even Grievant acknowledged in his own testimony under cross-examination that the medical documentation he submitted to Human Resources in response to Williams' written request of May 2, 1997 was void of any affirmation by his physician he had the ability to perform the bid-for FSM Operator position without any restrictions either at the time then or within the following six (6) month period.

Based on the foregoing argument asserted, the Postal Service requests the Arbitrator to deny the instant grievance in its entirety.

OPINION

The record evidence persuades the Arbitrator that at the time Grievant bid the subject Tour 3 FSM Operator position, he was technically no longer on light duty status as the date the job posting was in effect, April 24, 1997, was the ending date of the ten (10) day extension period Grievant had requested to remain in light duty status which, request, was granted by Plant Manager, Dooley. It can therefore be reasoned that through a quirk in timing of outputting the then most recent computerized light duty log, the date of which happened to be April 24, 1997, Grievant's name appeared on the log and Romore, not questioning the validity of Grievant's status as reported on the log, followed procedure and subjected Grievant to the provisions of the September 1, 1987 LMOU (Jt. Ex. 3), thereby requiring him to protect his selection as the senior and successful bidder for the FSM Operator position in question by the submission of medical documentation affirming his ability to perform the duties of the bid-for position. At this point in time, even though Grievant was enduring physical distress in performing the duties of his position as mail processor in Automation, he was no longer on light duty status, he had not filed a Worker's Compensation claim and apparently, had yet to file for FMLA leave as a result of his diagnosed chronic condition of tendinitis, which condition commenced in September of 1996, according to the record evidence. Thus, had Grievant then challenged Management's application of the 1987 LMOU to his specific circumstances, he most likely would have prevailed in an effort to exempt himself from the requirement to submit the medical documentation Williams requested he submit. However, Grievant not only failed to mount such a challenge, claiming that, at the time, he was ignorant of his Contractual rights, but he outsmarted himself, motivated by his desire to remain employed at the Postal Service, by submitting a FMLA Certification simultaneously with his submission of the medical documentation requested by Williams. The significance of Grievant having submitted the FMLA Certification (Un. Ex. 6) is found by the Arbitrator to be two-fold, to wit: (1) admission by Grievant he had a medical problem severe enough in degree to qualify him for approval of a light duty assignment; and (2) causing a question to arise regarding the specific nature of his medical problem relative to his ability to perform the bid-for FSM Operator position. The former point is deemed by the Arbitrator to serve as justification for Management's subjecting Grievant to the requirements of the 1987 LMOU, as the information presented in the FMLA Certification reveals the presence of certain physical limitations having the potential of barring him from assuming the FSM Operator position either at the time or, henceforth, in the future. The latter point is significant for the very same reasons but, additionally, it cast sufficient enough doubt about Grievant's condition to cause Management to more closely scrutinize Grievant's medical documentation than it usually would have under a more typical set of circumstances. Thus, while

Management inadvertently wrongly subjected Grievant to the requirements of the 1987 LMOU at first, it was the Grievant, by his continued and determined effort to maintain a light duty status that lent legitimacy to Management's action of requiring Grievant to provide medical documentation in substantiation of a claim he possessed the ability to perform the duties of the FSM Operator position.

Although the Union claims that even though Grievant was wrongly subjected to the dictates of the 1987 LMOU he nevertheless complied with the LMOU's requirements, the Arbitrator finds the whole of the record evidence before him does not support this position. While Grievant did, in fact, comply with the procedural requirement to submit the medical documentation within the permitted fourteen (14) day time parameter, a procedural requirement that heretofore had been accepted by the Union as an uncontested established local practice in the implementation of the 1987 LMOU, he nevertheless failed to comply with the substantive requirement of securing sufficient and adequate medical documentation explicitly requested of him by Williams in her May 2, 1997 letter. That letter, with specificity and clarity, informed Grievant it was his responsibility to provide current medical documentation that clearly indicates he would be able to fully perform the duties of the bid position within the time period. Neither Romore, nor Williams, nor even Grievant himself as reflected by his own testimony proffered here, in this arbitral proceeding, found the note written by his personal physician's assistant to satisfy the standard set forth in Williams' May 2, 1997 letter. Grievant admitted that the medical documentation he submitted to Human Resources in the form of a very truncated note written on a prescription pad, failed to make reference to any of his physical limitations affecting him at the time and that the note was devoid of any affirmative statement by Grievant's physician he (Grievant) would possess the ability to perform the duties of the FSM Operator position anytime within the provided for six (6) months. The Union takes exception to the alleged deficiencies Management asserts were evident by the physician's note in question here, arguing that the LMOU does not demand medical notes be written in a certain specified way or, that certain words and phrases be used. The Arbitrator respectfully rejects this argument on grounds that even though the LMOU is silent on the manner in which medical documentation is worded or phrased, it is the substance of the note relative to the specific instructions given to employees, here the Grievant, as to what information is necessary to be provided that is the relevant factor. In this respect, Williams' May 2, 1997 letter is clear and unambiguous, directing Grievant to obtain information from his physician that in the opinion of the physician, Grievant would be capable of fully performing the FSM Operator position sometime within at least the first six (6) months of the bid being awarded. It is the Arbitrator's judgment that the note provided by Grievant's personal physician dated May 15, 1997 and proffered by Grievant to Human Resources in support of his

quest to have his bid accepted, totally fails to meet the informational requirement set forth by Williams in conformance with established past practice. Although Williams testified that she focused on the key word of "should" maintaining she would have considered the note more in conformance with the informational requirement had the physician used the word, "will," the Arbitrator is of the view that while the word "will" would have moved the note closer to compliance with the informational requirement, the note still would have been deficient due to its vagueness; specifically, Grievant's physician makes reference to "new job function" which is a reference that is far from clear. Is the physician referring to the position of the FSM Operator as opposed to the OCR job or is the physician referring to the act of grasping, the type of grasping that in the physician's opinion is the underlying causal factor of Grievant's tendinitis condition? The note is further unclear as to the meaning of the physician's observation that at the time he examined Grievant, he was not experiencing any left elbow pain. Does this mean that at some other time he would be experiencing such pain and how does this relate to his ability to perform the duties of the FSM Operator position? All of this discussion simply points out the fact that it was not merely a matter of semantics that the medical documentation was found by Management to be deficient as the Union argued but, rather, it was found to be deficient because it was vague and illusive relative to Grievant's capability to perform all the duties of the FSM Operator position.

While the Arbitrator concurs in the Employer's position that the medical documentation furnished by Grievant and submitted to Human Resources pursuant to the instructions set forth in Williams' May 2, 1997 letter was, by itself, sufficient and adequate grounds upon which to predicate Management's decision to disallow Grievant's bid for the FSM Operator position in question, he does not, at the same time, accept as representing the truth of the matter, the Employer's position that Williams' confined her decision to disallow Grievant's bid solely in consideration of the deficient medical documentation proffered by Grievant. The whole of the record evidence establishes that Williams was made aware Grievant had submitted a FMLA Certification at the same time he proffered the medical documentation to Streeter in Human Resources and she was further made aware of the information recorded on the FMLA Certification as evidenced by the exchange of e-mails with Local Union President, Lance Coles, on June 15, 1997 (Un. Ex. 11) wherein, she advises Coles, to ask Grievant for a copy of the FMLA Certification she references as, "the other medical statement," Grievant submitted on the same date (meaning May 16, 1997). The Arbitrator concurs in both the Union's position and the Grievant's position that Williams' decision to disallow Grievant's bid for the FSM Operator position was predicated on not only the medical documentation proffered by Grievant to Human Resources but, it was also made based on Williams' knowledge of the FMLA Certification Grievant proffered to Dooley which, under the given circumstances,

Williams found to be conflicting with the note. While the Union and the Grievant both imply this additional knowledge acquired by Williams was somehow prejudicial to Grievant on grounds the purpose of each document was separate and distinct, specifically that the FMLA Certification was submitted in support of Grievant's effort to remain on light duty whereas the note was submitted in support of his effort to be awarded the FSM job bid, the Arbitrator is not persuaded the "sharing" of this information under the given circumstances caused Williams to make a different decision than she would have made had she not known of the existence and the substance of the FMLA Certification. Absent such evidence to the contrary, even though the information on the FMLA Certification could have prejudiced Grievant had the note met the informational requirements requested by Williams in her May 2, 1997 letter, the fact is, that the note was deficient and that the additional information on the FMLA Certification acquired by Williams simply served to bolster Williams' determination to disallow Grievant's bid.

As if it were not enough that Grievant undermined his effort to obtain approval of his bid by hedging his bet, so to speak, by seeking a continuation of his light duty status in the event his bid was disallowed, Grievant outsmarted himself again when, after being denied his request to continue light duty, he opted to take the tact of a 180 degree turn by submitting medical documentation proclaiming he was no longer on FMLA restrictions and he could return to full duty status (Un. Ex. 12) solely intended as a means of securing approval of his bid for the FSM Operator position. While the Arbitrator fully understands that Grievant acted in this manner out of complete desperation to maintain his employment at the Postal Service and to earn a decent living wage, the Arbitrator nevertheless must acknowledge the inescapable fact that Grievant wilfully and purposefully perpetrated a hoax on Management, knowing full well that this medical documentation was a flat out lie. Grievant even acknowledged this in his testimony when he stated that when he submitted his note (Un. Ex. 12), he did so knowing that basically he was risking his body to secure the FSM bid. This was a ploy which Grievant lost and Grievant has only himself to blame for putting himself in such a position of jeopardy. For this, the Grievant should not be rewarded with a favorable finding on the matter of this instant grievance and concomitantly conferring upon him the Union's proposed remedy.

Based on the foregoing findings, the Arbitrator rules to deny the subject grievance in its entirety.

A W A R D

Based on the rationale set forth in the preceding Opinion section, the Arbitrator finds Postal Service Management did not violate the 1994-98 National Agreement (Jt. Ex. 1) when it denied Grievant's bid for the posted FSM Operator position. Accordingly, the Arbitrator rules to deny the instant grievance in its entirety.

GRIEVANCE DENIED.



GEORGE EDWARD LARNEY
Arbitrator

Chicago, Illinois
November 30, 2000