

C# 08170

REGULAR ARBITRATION PANEL

In the Matter of the Arbitration
 between
 UNITED STATES POSTAL SERVICE
 and
 NATIONAL ASSOCIATION OF LETTER
 CARRIERS

(
) GRIEVANT: Phyllis Seever
 (
) POST OFFICE: Las Vegas, NV
 (
) CASE NO: W4N-5F-C-31521
 (
) NALC Computer No.
 (
) GTS 2155
 (
)
)

BEFORE: William E. Rentfro ARBITRATOR

APPEARANCES:

For the U.S. Postal Service: Bette Leavitt, Director,
Employee & Labor Relations

For the Union: Thomas H. Young, Jr.
Regional Administrative
Assistant

Place of Hearing: 1001 Sunset Road, Las Vegas,
NV

Date of Hearing: March 24, 1988

AWARD:

Arbitrator concludes that the Postal Service did not properly interpret and apply Section 580 of the E&LR Manual when it denied Grievant the right to work her bid position because of an asserted failure to conform with uniform regulations. Grievant is to be made whole by restoring and compensating her for the 142.12 hours of work she was denied and which she took as sick leave, annual leave and leave without pay.

Date of Award: July 22, 1988

William E. Rentfro
(Signature of Arbitrator)

STATEMENT OF THE CASE

This case involves a dispute over the enforcement of uniform regulations (dress code) which resulted in the Grievant not being allowed to perform her street duties. The basic facts are not in dispute. The Grievant, Phyllis Seevers, began her employment with the Postal Service on October 4, 1982. She worked at the Huntridge Station as a city carrier until her resignation on October 7, 1986. Larry Roberts was Station Manager and Grievant's immediate supervisor during the period in question.

As a Regular Carrier, Grievant was required to wear a prescribed uniform while on duty, was provided a uniform allowance and was responsible for complying with relevant regulations concerning uniform maintenance, attire and appearance. (E&LR Manual, 580. Work Clothes and Uniforms, Sections 581.1, 581.2, 581.26.) Section 583.22 sets forth "Authorized Uniform Combinations" that may be worn by female city carriers during warm weather. It gives carriers the option of wearing a short sleeve blouse with slacks, skirt or culottes; or, a short sleeve blouse with walking shorts and navy blue knee length socks.

In March 1986, Grievant learned she was pregnant. She provided the Station Manager with medical certification confirming that fact and limiting her work to 8 hours a day and a

35-pound lifting restriction. She continued to perform her full duties for a month or so in accordance with these initial restrictions.

Beginning sometime in April, Grievant began wearing maternity clothing to work, including blouses in brighter colors than the regulation blue-gray, and maternity slacks or shorts with anklets. Shortly thereafter she was instructed by the Manager that she would not be allowed to continue to wear bright colors on duty. She was told to dress in blue-colored items more closely resembling regulation colors, and to wear a Postal Service insignia on her shirt or cap. She complied with these directions by purchasing a "civilian" navy blue maternity smock from a uniform shop, and blue maternity shorts which she described as looking much the same as culottes. She also purchased a baseball cap with the Postal Service emblem. In response to the Manager's inquiry about her anklets, Grievant explained that she had a skin condition which inhibited her from wearing tight clothing or socks. She was instructed to obtain medical verification. She brought a doctor's statement dated May 5, 1986, stating that Grievant "should not be wearing socks or any other restrictive clothing."

Grievant testified that she had complied with uniform standards throughout her employment; that she had routinely worn anklets instead of longer socks. During a previous pregnancy in 1983 she worked until shortly before her delivery date

and was allowed to wear maternity clothing including shorts with anklets rather than knee socks. She stated that previous management at Huntridge station had allowed deviations from the regulations in such cases and had not insisted on strict compliance.

Grievant worked for another week without complaint. When she reported for duty on Saturday, May 10, she was directed by the supervisor on duty to case her route and then check out. On Monday, May 12, she reported for duty in the same maternity attire, sans knee socks; and, accompanied by her Union Steward, met with the Manager. He informed her that she would not be allowed to deliver her route because, without knee socks, she was not in "proper uniform," and was to check out after casing her route. Grievant complied with the instruction, spending 2-3 hours casing her route and taking the balance of her usual 8-hour day as annual leave. The instant grievance was promptly filed protesting the Manager's directives and requesting that Grievant be allowed to work her duty assignment (without knee socks) and be credited for the leave she had taken.

Between May 12 and June 13, 1986, Grievant's duties were restricted to casing her route and some other inside duties from time to time for an average of 2 or 3 hours per day. The remaining portion of her usual 8-hour day was taken as sick leave, annual leave, or leave without pay for a total of 85.88 hours during this period. In response to a request for

clarification, Grievant submitted an additional medical statement from her physician, dated May 27, 1986. It stated that Grievant "cannot wear socks anytime with pregnancy. She has a severe dermatitis with infection and bleeding with any socks" (emphasis in original).

On or about June 3, Grievant was offered a router light duty position at another station, working a 10:00 a.m. to 6:30 p.m. shift. She turned down the offer because of the hours conflicting with her children's school schedule, and requested to be allowed to continue her casing duties and then report to the other station to fill out the 8 hours. No accommodation was reached. Grievant continued her 2-3 hours casing at her regular station until June 27, losing an additional 56.24 hours of work. She then went on maternity leave and has since resigned from the Postal Service.

ISSUE

The parties were unable to agree on an issue. The Arbitrator frames it as follows: Did the Postal Service properly interpret and apply Section 580 of the E&LR Manual when it denied Grievant the right to work her bid position because of an asserted failure to conform with uniform regulations? If so, what is the appropriate remedy?

DECISION AND CONCLUSIONS

After a careful consideration of all the evidence in this matter, the Arbitrator is persuaded that the grievance must be sustained. The Station manager's rigid insistence on strict compliance with the letter of the knee sock option in Section 583.22 of the Manual was arbitrary and capricious, and not a proper interpretation and application of the E&LR Manual.

Of course, the Postal Service has the right and the responsibility to enforce reasonable rules, including those pertaining to uniform standards. Grievant was aware of the requirements, even though they had been relaxed under a previous manager. She complied with all requirements save one--the wearing of knee length socks. Her doctor forbade her to wear any socks because of a severe dermatitis condition, and so informed the Station Manager.

The Postal Service argues only that the uniform regulations are clear; that knee length socks are prescribed to be worn with the option of shorts during warm weather; and that the station manager has no authority to change the regulations. But this wooden stance is effectively countered by the position explained in a Postal Service exhibit introduced at the arbitration hearing (Postal Exhibit 3). In a March 16, 1983 letter to the National Association of Letter Carriers from Andrew A. Masiello, Program Manager, Special Labor Relations Programs, Labor Relations Department (USPS), the uniform

requirements of female city letter carriers during advanced stages of pregnancy was discussed and clarified. That letter states in part:

Although the E&LR Manual requires city letter carriers to wear the prescribed uniform while performing their duties, installation heads have been allowed to exercise some flexibility in cases of female city letter carriers in advanced stages of pregnancy . . .

Such cases are reviewed on an individual basis, and installation heads are encouraged to use discretion in reaching a sensible solution.

Although the above statement was directed to the problem of female employees requiring larger sized uniform items, it suggested the "sensible" solution of allowing the wearing of personal nonuniform garments if required by the circumstances.

Under normal circumstances the Arbitrator would hesitate to disturb Management's enforcement of a valid regulation. Employees are expected to comply with known and valid rules. If Grievant had deliberately or negligently disregarded the knee sock requirement without compelling reason, she would be hard put to complain about the consequences.

However, the facts involved in Grievant's predicament cry out for the "exercise of flexibility" and the "use of discretion in seeking sensible resolution" after reviewing her case on an "individual basis," as suggested by Mr. Masiello's letter (Postal Exhibit 3). Grievant was pregnant; the weather was warm; she was permitted to wear culottes without knee socks, or maternity shorts with knee socks. (This Arbitrator has some difficulty discerning all that much difference between the two.)

Grievant could and did wear the shorts, along with a proper blouse and a cap with Postal insignia, but she could not wear knee socks. She did wear "peds," which are described as "golf socks" which cover the foot, but not the ankle and calf. She went as far as she could to comply with the Station Manager's direction. The Station manager did not respond in kind--with an appropriate exercise of reasonableness or discretion.


The existence of a rule or regulation which management has the right to enforce, does not imply the right to rigidly enforce it without consideration of particular circumstances such as medical incapacity to comply. The power to enforce a rule does not imply the right to "letter" enforcement in each and every case. It is implied that management will exercise its discretion in a rational, informal manner after weighing all the facts and circumstances involved. This principle is nothing new. It is fundamental to the concept of just cause where discipline is contemplated for violating a rule, or where questions arise concerning an employee's temporary inability to perform all the duties of a job. The same principle is implicit in considering management's application of uniform requirements in this case.

Finally, Management may justify the strict and literal enforcement of a rule that clearly requires such enforcement. Here, Management made no attempt to demonstrate some overriding importance to enforcing a knee sock standard in all cases and

under all circumstances. It rested its case on the rule, and its belief that a Station Manager has no flexibility or discretion to enforce it in a reasonable or sensible manner. The same inflexible attitude was exhibited in making no attempt to accommodate Grievant when a light duty assignment at another station was offered which was burdensome for Grievant because of a work schedule different from her children's school schedule. In finding that the grievance is sustained in this case, the Arbitrator finds that the appropriate remedy is to make Grievant whole for her lost pay--142.12 hours--during the period May 10, 1986 through June 27, 1986.

AWARD

For the reasons expressed above, the Arbitrator concludes that the Postal Service did not properly interpret and apply Section 580 of the E&LR Manual when it denied Grievant the right to work her bid position because of an asserted failure to conform uniform regulation. Grievant is to be made whole by restoring and compensating her for the 142.12 hours of work she was denied and which she took as sick leave, annual and leave without pay.



William E. Rentfro
Arbitrator