

REGULAR ARBITRATION PANEL

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In the Matter of the Arbitration)	Grievant: Roland-Nesbitt
	(
Between)	Post Office: Lisle, IL
	(
UNITED STATES POSTAL SERVICE)	Case No. 4J-19N-4J-C-
	(21455749
and)	
	(
National Association of Letter Carriers, AFL-CIO)	Union No. LI20210996
_____	(

BEFORE: ARBITRATOR John A. Obee

APPEARANCES:

For the U.S. Postal Service:	Julian Singleton
For the Union:	John Poskin
Place of Hearing:	ZOOM Video Conference
Date of Hearing:	March 1, 2022
Date of Award:	March 7, 2022
Panel:	Illinois 1

AWARD SUMMARY

The Grievance is sustained. The Postal Service violated Article 13 of the Collective Bargaining Agreement and Article 10 of the LMOU when it denied the Grievant's Request for Light Duty. Consistent with this Award, the Grievant is to be immediately reinstated to her position with full back pay and be provided such other remedies as more fully set forth in this Opinion and Award. The Arbitrator retains jurisdiction for 90 days to address Remedy issues, if any, only.

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 John A. Obee, Arbitrator

ISSUE

As set forth in the DRT decision, the issue to be addressed in this matter is as follows: Did the employer violate Article 13; 19 & 30 of the National Agreement when they failed to provide light duty for the grievant subsequently placing her in an off duty status and, if so, what is the proper remedy?

STATEMENT OF FACTS

It is undisputed that the Grievant, Marva Roland-Nesbitt, was a long-term 22-year employee of the Postal Service working as a City Letter Carrier, until September 7, 2021, when her Request for Light Duty was denied and she was placed on off duty status. The following chronology of events begins with the Grievant's initial Request for Light Duty on July 16, 2021, through the ultimate denial of her Request for Light Duty on September 7, 2021.¹

July 16, 2021

On July 16, the Grievant made her initial Light Duty Request on a USPS form. The form was completed by her Doctor, and outlined certain restrictions that the Grievant had for the performance of her job, including but not limited to restrictions related to lifting, walking, standing, carrying, etc. The Doctor indicated that she could perform these functions "with breaks." (Record p. 19)

July 26, 2021

On July 26, the Postal Service Nurse acknowledged receipt of the Light Duty Request and sent an email to the Postmaster outlining the Grievant's restrictions as set forth on the Request and advised him to let the Grievant know if he could accommodate her and provide an approval or denial letter. (Record p. 48)

¹ In the Postal Service's Opening and Closing Statements, in Management Contentions, and in the testimony of the Postmaster at the Hearing, the Service begins its chronology with the Grievant's absences in April 2021 through August due to her medical condition. Testimony was introduced that from the end of April 2021 until the time that her Request for Light Duty was denied on September 7, she only worked 7 days. However, the fact that she was off for extended periods of time due to her medical condition has no relevance to her Requests for Light Duty and there is a thread that runs through the history of this matter and the testimony of the Postal Service that the Service considered the Grievant's medical condition generally and the time she was off work due to her medical condition, in the Service's ultimate denial of her Request for Light Duty.

8/16-8/20, 2021

Although there was no approval or denial letter introduced on this record, apparently, the Postmaster allowed the Grievant to work within her restrictions, as she worked from August 16 to August 20, 2021. (Record pp, 30-31)

August 20, 2021

According to Management Contentions and the testimony of the Postmaster at the Hearing, the Postal Service became aware that the Grievant was having other employees deliver her parcels and because of that and because the Postmaster believed that the need for breaks as set forth on the Light Duty Request was "vague," he required that the Grievant update her Request for Light Duty. (Record p. 43).

August 27, 2021

On August 27, the Grievant's Doctor completed the USPS Light Duty Request form. On the form, the Doctor identified that the Grievant could perform an 8 hour work period, but would need breaks of between 15-30 minutes 4 times a day. The Doctor indicated that the Grievant suffered from an auto immune form of arthritis and wrote "please allow for these light duty accommodations so that she may continue to work". (Record p, 20).

August 31, 2021

The second Request for Light Duty was received by the Postal Service on August 31, 2021, via fax. (Record p. 56).

9/1-92, 2021

The Grievant reported for work on both September 1 and September 2 and worked her eight- hour shift. (Record, p. 33)

September 7, 2021

On September 7, 2021, the Grievant reported to work to begin her shift at 8am. (Record, p. 35).

September 7, 2021

According to his testimony and his written statement, the Postmaster, who had been on vacation, returned to work on September 7, 2021 and for the first time reviewed the August 27 Light Duty Request. In his written statement, the Postmaster indicated that he did not do a "line by line audit" of the Request but he determined that the Grievant could not work an eight-hour day and he was "not going to make work available for her restrictions." (Record, p. 43)

September 7, 2021

On September 7, at 8:04am, the Postmaster sent an email to the USPS Nurse and others indicating that he had just received the Light Duty Request on that date. In the email, he wrote the following:

This has been going on since April of this year her request large block leave. The request states that this is a lifetime illness. My question is if this is a lifetime illness and she can't work it's looks like even four hours a day what are her options at this point, because I can't accommodate this request for light duty.

(Record p. 54)

September 7, 2021

At 8:22am on September 7, the Nurse responded to the Postmaster's 8:04am email with the following: "Light duty is not job related therefore if you are unable to accommodate the employee restriction you do not make work for her. (Record p. 55).

September 7, 2021

On September 7, the Grievant was served with a form entitled TEMPORARY LIGHT DUTY ASSIGNMENT – DISAPPROVAL, by her immediate supervisor. The reason given for the disapproval was the following: "Due to restriction that have this time we cannot accommodate your current restriction." (Record p. 38)

September 7, 2021

At 8:55am on September 7, 2021, the Grievant clocked out of work and has been on off duty status since that time. (Record p. 35)

A Grievance was filed on September 9, 2021, and is properly before this Arbitrator for Hearing and decision making.

POSITIONS OF THE PARTIES

UNION'S POSITION: The Union asserts that in denying the Grievant's Light Duty Request, the Postal Service violated both Article 13 of the Collective Bargaining Agreement as well as the Lisle Post Office LMOU. Article 13. 2.C requires the Postal Service to "show the greatest consideration" and give each Light Duty Request "careful

attention.” Correlatively, the LMOU requires that the Service make “every effort” to employ letter carriers for the purpose of Light Duty assignments. According to the Union, the Postal Service failed miserably in its obligations to give either “careful” consideration to the Grievant’s Light Duty Request or to show “every effort” to employ the Grievant for a Light Duty assignment. Citing arbitral authority, the Union asserts that the Grievant and the Union met its burden of proof when it presented the Grievant’s Light Duty Request. The burden then shifted to the Service to show that it used every effort to find work for the Grievant within her restrictions, which the Service did not in any way do, as it denied the Grievant’s Light Duty Request within 33 minutes of its receipt, despite the fact that the Grievant had demonstrated by working on September 1 and September 2 that she could perform her job within the restrictions that she had. The Union cites to the following arbitral authority in support of its position:

J11N-4J-C-16131916 (Durham, 10-5-16)
J11N-4J-C-15053849 (Simon, 8-10-16)
H06N-4H-C-09178860 (Roberts, 10-21-09)
N8-W-0406 (Mittenthal, 9-21-81)

POSTAL SERVICE’S POSITION: Postal Service assert that because this is a contract case, the Union bears the burden of proof that the Service violated Article 13 and the LMOU. The Union has presented no evidence to show that the Service failed to make every effort or failed to give careful consideration to provide work to the Grievant within her restrictions. The Postal Service in fact approved her initial Request for Light Duty and she was permitted to work four days in August but because of the manner in which she performed, the Service requested that the Grievant provide more detailed information regarding her restrictions. When the Service received her August 27 updated medical, it determined that her restrictions were too severe and there was no

work that she could safely perform within those restrictions. At no time did the Union offer any evidence that the Grievant could actually perform her job duties with the restrictions as the Doctor set forth on the Light Duty Request Form. In support of its position, the Postal Service cited the following arbitral authority in support of its position:

B16N-4B-C-20407793 (Byrne, 7-19-21)
C16N-4C-C-18347291 (Barrett, 3-9-19)
B11N-4B-C-16080913 (Cenci, 7-14-16)
C06N-4C-C-11408927 (Roberts, 2-14-13)
G06N-4G-C-12160246 (Roberts, 12-26-12)

ANALYSIS AND CONCLUSIONS

As this case involves a matter of contract interpretation, the Postal Service asserts that the burden is on the Union to prove a violation of Article 13 and the LMOU. In its Post-Hearing Brief at p. 2, the Postal Service asserts that it did not violate Article 13 or the LMOU by not providing a Light Duty assignment to the Grievant and the Union failed to prove that the Service did not make a bona fide effort to provide the Grievant with work within her restrictions. There is a conflict among the arbitral authority as cited by the Postal Service and the Union as to the exact nature of the burden of proof that is required in a case where an employee has made a Request for Light Duty and what the Service's obligations are under Article 13 and the LMOU. The Union cites to the Arbitration Award of Arbitrator Lawrence Roberts in which he set forth the relative "burdens of proof" in a Light Duty Request case, as follows:

Initially, the Union's contractual mandate is simple, only requiring a written light duty request from the Grievant, along with supporting medical documentation in support of the request. In this case, that particular portion of the requirement was met.

Hence the burden shifted to the Agency to show that the request made by the Grievant was given the consideration and attention called for by the Agreement.

USPS # HO6N-4H-C-09178860 (Roberts, 10-21-09) at p. 7. See also, USPS # J11N-4J-C-16131916 (Durham, 10-5-16) (Burden is on Management to show that it met its obligation under JCAM 13.2.C). The Postal Service, on the other hand, relying on the Arbitration Award of Arbitrator Donald Barrett, asserts that the burden of proof in a Light Duty Request case remains at all times with the Union and in fact there is no such burden shifting. In USPS # C-16N-4C-C-18347291 (Barrett, 3-9-19), Arbitrator Barrett opined as follows:

The Union maintains that they have demonstrated a prima facie case with the burden shifting to Management to prove that they did not violate the Agreement. I must respectfully disagree. There is no contractual, or arbitral support for such a position, and I find the burden to prove a violation does properly remain with the moving party, in this case that is the Union.

Award a p. 8. Thus, to begin the analysis in this case, we must determine what the relative burdens of the parties are in the context of this case to see whether in fact there was a violation of the CBA and the LMOU.

Following the logic of Arbitrator Roberts, the Union clearly met its burden of presenting a prima facie case when it provided the Postal Service with its Light Duty Request dated August 27, 2021. The question becomes whether the burden then shifted to the Postal Service to establish by demonstrative evidence that it gave the “greatest consideration” to the Grievant’s Light Duty Request, giving “careful attention” to that Request, as required by Article 13, or, correlatively, employing “every effort” to employ letter carriers for the purpose of light duty assignments as required by Article 10 of the LMOU. Arbitrator Roberts asserts that there is such a burden shifting to the Postal Service imposing an obligation for the Postal Service to demonstrate compliance with the CBA and the LMOU, while Arbitrator Barrett would assert that there is no such

burden shift and the burden remains at all times with the Union. While the arguments may be semantic in nature, they are important, but in this context this Arbitrator finds that Arbitrator Robert^s position is the correct one based upon the language of the CBA and the LMOU and based upon logic.

Article 13 and the LMOU create certain duties on the part of the Postal Service when an employee makes a Light Duty Request. The Service is the only party that can demonstrate empirically what steps it took to comply with those duties. Only a Postmaster or other delegated authority can offer demonstrative evidence or testimony to show exactly what the Service did to accommodate the Light Duty Request. Such proofs are not within the ken of the Union, as the Service knew what it did, or more correctly did not do in the present context, to show compliance with Article 13 and the LMOU. Thus, reason demands that there must be a shift in the burden of proof to the Postal Service to demonstrate that it had fulfilled its contractual obligations, once an employee, such as the Grievant, has submitted a Light Duty Request, along with medical documentation in support of such Request. The question then becomes, did the Postal Service in the present case offer any evidence that it complied with Article 13 and the LMOU. The answer is no.

Arbitrator Roberts again provides persuasive guidance in reaching the conclusion that the Postal Service failed to comply with Articles 13 and the LMOU. In Arbitrator Roberts case, the Grievant had supplied a written Request to the Service via fax and the very next day, the Request was denied. Arbitrator Roberts asserted that Article 13 imposes affirmative, compliance obligations and it was clear that such obligations could

not properly be complied with in one day's time from the time of the initiation of its Request to its denial. He wrote the following:

Management's decision maker in this process failed in providing "greatest consideration" or "careful attention" in that general process described by the negotiators. Given that short time span, it was rather obvious, the Officer in Charge, invoked very little time, given the general thought process directed by the Parties Agreement.

Award at p. 11. Based upon the time sequence in the present case, the facts are even more telling that the Postmaster did not give the greatest consideration or exercise every effort to find Light Duty Work for the Grievant, as he saw the Request for the first time after 8am on September 7 and denied the Request, after consulting with the Nurse, within less than an hour, as the Grievant clocked out at 8:50am on that same day. Such action cannot in any way be construed as being in compliance with the requirements of Article 13 or the LMOU.

Besides the timeframe from when the Postmaster received the Grievant's Request and the denial of that Request, there is no evidence produced by the Service that the Postmaster gave any consideration to the Grievant's Request, let alone "careful" consideration to that Request. Even in his written statement that the Postmaster provided as part of the record in this case, there is evidence that he only gave a cursory review to the Grievant's Request, as he acknowledged in that statement that he "didn't sit down and have a line by line audit" of the Grievant's Light Duty Request. (Record at p. 43) Little can be gleaned from the "Disapproval" itself, which was issued by the Grievant's Supervisor and not by the Postmaster,² and reads as follows:

² The Union argued that the language of Article 13.2.C requires the installation head, in this case the Postmaster, to issue the denial of the Light Duty Request and in this case, the Postal Service violated that Article by having the Grievant's Supervisor issue the denial. While the language itself does require the

“Due to restriction you have this time we cannot accommodate your current restriction.” (Record p. 38) As the Union persuasively argues, there is nothing in this denial letter that sets forth with any specificity why the Postal Service could not accommodate the Grievant’s restrictions. No factual predicate is laid out for the denial nor is there any attempt to inform the Grievant of the analysis that the Service did in reaching the conclusion that the Grievant’s restrictions could not be accommodated. In addition, the Union laid out in its contentions the following work that the Grievant could perform within her restrictions:

The grievant is capable of answering phones, filing paperwork (3996s and 1571s), inspecting route books for errors and other miscellaneous work that could be performed. None of this was considered. UBBM also needs to be processed due to lack of clerks in Lisle or other clerk work that CCAs are currently performing.

(Record at p. 5). As the Union presciently notes, this record is bereft of any evidence that the Service carefully considered any of these other options for keeping this 22-year employee gainfully employed. See USPS # J11N=4J-C-15053849 (Simon, 8-10-16).

There is also evidence on this record that the Postmaster failed to consider that the Grievant could in fact perform her job as a Letter Carrier within the description as set forth in the August 27 Light Duty Request. After faxing the Light Duty Request form to the Postal Service, the Grievant reported for work on September 1 and again on September 2 and worked 8 hour shifts. The fact that she was able to work full shifts on these two dates offered compelling evidence that the Grievant was able to perform the job within her restrictions. But rather than interview the Grievant and talk to her as to how she was able to handle her work as a Letter Carrier, in his haste to deny the

installation head to issue the denial, there is nothing in the language to prohibit the installation head from delegating the duty to the Grievant’s immediate supervisor.

Grievant's Light Duty Request, the Postmaster did not give the Grievant an opportunity to explain her situation, let alone give her the opportunity to offer to take her breaks off the clock if need be, as the Union suggested as an alternative to the breaks as provided under the contract. In arbitral authority as cited by the Service, Management was found to have made a good faith effort to find light duty work for the Grievant, which included interviewing the Grievant to understand what the Grievant could and could not do. See, e.g., USPS # B11N-4B-C-16080913 (Cenci, 7-15-16). No such good faith effort occurred in the present case.

Lastly, as previously noted, there is evidence in this case that factors other than the Grievant's restrictions as set forth in her Light Duty Request played a role in the denial of her Request, making this case more akin to a Removal case than a denial of a Light Duty Request case. Evidence was introduced of the fact that the Grievant had been off work for an extended period of time from April through August. In his written statement and even in his email to the Nurse on September 7, the Postmaster placed a great deal of emphasis on the Grievant's time off, writing on September 7 to the Nurse: "This has been going on since April her request large block leave." (Record at p. 56) But the fact that the Grievant suffers from a serious, genetic autoimmune system disease and had to take off time for that has no relevance or bearing on whether she can perform her job as a Letter Carrier, based upon restrictions that are a result of her medical condition. The Postal Service's obligation and that of the Postmaster was to give "careful consideration" and to exercise "every effort" to find light duty work for this 22- year employee, who through no fault of her own suffers from a severe, debilitating condition. The Postal Service and the Postmaster did not give such careful

consideration, nor did they employ every effort to find light duty work for the Grievant and the Grievance is sustained, leaving the only question as to the Remedy for the violation.

As a result of the violation, this Arbitrator directs the Postal Service to Cease and Desist its proven violation of Article 13 of the Collective Bargaining Agreement, as well as Article 10 of the Lisle LMOU. The Grievant is to be immediately returned to work and provided appropriate work within her medical restrictions and be offered such reasonable accommodations to be able to work within said restrictions. The Grievant is to be made whole for all lost wages, all annual leave and sick time that she lost and would have accumulated but for the violation of the contract, reimbursement for any medical expenses that she may have been forced to incur as a result of being placed on off duty status and to be otherwise made whole for any other losses she may have incurred. The Arbitrator retains jurisdiction for 90 days to address Remedy issues, if any, only.