

REGULAR ARBITRATION

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 In the Matter of Arbitration \*  
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 Between \*  
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 United States Postal Service \*        Robert Mayse  
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 And \*        USPS Case No. K16N-4K-C 20213280  
 \*    K16N-4K-C 20213299  
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 National Association of Letter \*        NALC Case No. DRT# 13-505016  
 Carriers, AFL-CIO \*    DRT#13-505018  
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APPEARANCES:

Postal Service Advocate:                        Phillip Heying

NALC Advocate:                                     Walter Brummage

Place of Hearing: Havre De Grace, MD

Date of Hearing: November 5, 2020

AWARD SUMMARY

The grievance is sustained. The Postal Service shall cease and desist using the locally developed light duty medical form and the Grievant shall have 92 hours of sick leave restored.

Date of Award: December 2, 2020

David A. Stanton

David A. Stanton, Arbitrator

## INTRODUCTION

This grievance arose under the 2016 National Agreement between the United States Postal Service (USPS or Postal Service) and the National Association of Letter Carriers, AFL-CIO (NALC or Union). Specifically, NALC Branch 1749 filed Grievance Number: K16N-4K-C 20213280 (DRT 13-505016) alleging Management violated Article 13 and 19 of the National Agreement by requiring the completion of local light duty forms and failing to provide light duty work to the Grievant. The grievance, not being resolved at the earlier steps of the grievance procedure, was presented to the Arbitrator at 9:00 a.m. on November 5, 2020, at the Havre De Grace, MD Post Office located at 301 Juniata St., Havre De Grace, MD 21078. The parties had a full and fair opportunity to present argument and evidence; to engage in the examination and cross-examination of witnesses; and to present any and all arguments in support of their respective positions. The parties chose to make an oral summation and the record was closed upon receipt of those arguments on November 5, 2020.

## ISSUE

The parties allowed the arbitrator to frame the issue to be decided in this matter:

Did management violate Article 13 of the National Agreement and the light duty provisions contained in the Havre De Grace, MD LMOU, and Article 19 via ELM 355 by requiring Grievant to complete local light duty forms and by failing to provide light duty work within his work restrictions? And if so, what is the appropriate remedy?

## EXHIBITS INTRODUCED

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|-----------------|--|
| <u>Joint 1:</u> | 2016 - 2019 National Agreement – NALC                  |
| <u>Joint 2:</u> | JCAM   |
| <u>Joint 3:</u> | Moving Papers: K16N-4K-C 20213280 (73 pages)           |
| <u>Joint 4:</u> | Moving Papers: K16N-4K-C 20213299 (67 pages)           |
| <u>M-1</u>      | Case No. B98M-1B-C 99240308, Talmadge, July 13, 2001   |
| <u>M-2</u>      | Case No. C16M-1C-C 18188200, Licata, July 11, 2018     |
| <u>M-3</u>      | Case No. K16N-4K-C 19470403, Stanton, October 28, 2020 |

## APPLICABLE NATIONAL AGREEMENT PROVISIONS

### Article 13, Section 1.B. Introduction

The U.S. Postal Service and the Union recognize their responsibility to aid and assist deserving full-time regular or part-time flexible employees who through illness or injury are unable to perform their regularly assigned duties, agree to the following provisions and conditions for reassignment to temporary or permanent light duty or other assignments. It will be the responsibility of each installation head to implement the provisions of this Agreement within the installation after local negotiations.

### Article 13, Section 2. Employee's Request for Reassignment

#### A. Temporary Reassignment

Any full-time regular or part-time flexible employee recuperating from a serious illness or injury and temporarily unable to perform the assigned duties may voluntarily submit a written request to the installation head for temporary assignment to a light duty or other assignment. The request shall be supported by a medical statement from a licensed physician or by a written statement from a licensed chiropractor stating, when possible, the anticipated duration of the convalescence period. Such employee agrees to submit to a further examination by a physician designated by the installation head, if that official so requests.

#### C.

Installation heads shall show the greatest consideration for full-time regular or part-time flexible employees requesting light duty or other assignments, giving each request careful attention, and reassigning employees to the extent possible in the employee's office. When a request is refused, the installation head shall notify the concerned employee in writing, stating the reason for the inability to reassign the employee.

### Havre de Grace, MD LMOU 2016-2019

#### Item IV Light Duty

1. Full time or part time employees recuperating from a serious illness or injury, will be granted light duties, when requested by the employee, which the ill or injured employee may be able to perform.
2. Within the carrier craft, the following shall be considered light duty assignments:
  - a. Labeling cases
  - b. Collections
  - c. Performing services on auxiliary routes
  - d. Casing Mail
  - e. Express Mail delivery

### Article 19 Handbooks and Manuals

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect.....

## Employee and Labor Manual

### Section 355 Light Duty Assignments

#### 355.11 Circumstances

Any full time-regular or part-time flexible employee recuperating from a serious illness or injury and temporarily unable to perform the assigned duties may voluntarily submit a written request to the installation head for temporary assignment to a light duty assignment.

#### 355.12 Method

Voluntary requests are made in accordance with the applicable collective bargaining agreement.

#### 355.13 Employment and Placement

The light duty provisions of the various collective bargaining agreements between the Postal Service and the postal unions require that installation heads show the greatest consideration for full-time regular or part-time flexible employees requiring light duty or other assignments giving each request careful attention and reassign such employees to the extent possible in the employee's office.

### BACKGROUND

Mr. Robert Mayse, a letter carrier in the Havre De Grace Post Office, suffered a torn medial meniscus in his right knee. On March 18, 2020, he visited his attending physician Dr. Evan Crain. Dr. Crain provided Mr. Mayse the following written Clinical Update:

#### Work Status

**No work dates:** 03/18/20 to 3/22/2020

**Modified Work Dates:** 03/22/2020 to 04/17/2020

**Can Work Full Duty:** 04/18/2020

**Comments/Restrictions:** 03/23/2020 – 04/1/2020 Patient may work 4 hours (1 hour standing & 3 hours walking) 4/1/2020 – 04/15/2020 Patient may work for 6 hours (1hour standing & 5 hours walking).

On March 20, 2020 Mayse provided a signed hand-written note titled "Light Duty Work Request" with the Clinical Update attached to his Supervisor. The next day Havre De Grace Postmaster Melody Davis-Finazzo sent a letter to Mayse containing the following information:

On Wednesday, March 18, 2020 you received the official documents to request light duty. On Friday March 20, 2020 you submitted an unofficial request for light duty. At this time our request for light duty is denied. I have enclosed additional light duty request forms for your convenience.

Mr. Mayse declined to respond to the Davis-Finazzo letter. Instead, the NALC initiated the instant grievance contending Management violated the Havre De Grace LMOU, Article 13 of the National Agreement, and Article 19 of the National Agreement via ELM 355 by failing to provide Mr. Mayse with light duty work. As the grievance advanced through the Steps of the grievance procedure, the Union refined its argument to include that it was a violation of Article 19 to require the Grievant to fill out a particular form to be eligible for light duty. The parties were unable to resolve their differences and the dispute culminated in the instant arbitration proceeding.

### WITNESS TESTIMONY

#### Robert Mayse

Mr. Mayse testified that he had been a letter carrier for seventeen and one-half years. In November 2019, an MRI established that Mayse had a torn meniscus. He had surgery in early January 2020 but later in the month got a blood clot in the right leg. After a period of rehabilitation his Doctor advised him to slowly resume his job responsibilities. Grievant testified that he provided a hand-written light duty request and a Doctor's slip to Acting 204B Casandra Pearl. Shortly thereafter Grievant received a letter from Postmaster Davis-Finazzo advising him to fill out a proper form to request light duty. Mayse testified that the Acting Union President advised him to not complete the Form because it was illegal.

There were two Doctor's slips in the case file from the same day. Mayse explained that the first form simply stated he could work 4 hours a day from 3/23/2020 to 04/15/2020 and 6 hours a day from 4/01/2020 to 04/15/2020. The first form did not contain any specific light duty limitation, so he obtained a second form providing greater detail on the same day.

#### Gardner McCullough

Mr. McCullough has worked for the Postal Service for thirty-five years and has been the local Branch President since 2001. McCullough testified that he was the author of the grievance and both the Informal A and Formal A representative in this case.

In McCullough's view the JCAM sets out the requirements for an employee seeking light duty work. The JCAM provides that:

- Any full-time regular or part-time flexible employee may request temporary light duty, regardless of length of service.
- The request must be submitted in writing.
- The request must be supported by a medical statement from a licensed physician or by a written statement from a licensed chiropractor.
- The employee bears any cost connected with the statement required under this section.
- The employee must agree to submit to a further examination by a physical designated by the installation head, if requested.
- The Postal Service will be responsible for any costs when it requests a second medical examination.
- The employee may specifically seek light duty or may seek "other assignment" within his/her medical limitations.

According to McCullough the local form was first used in 2013 and that failure to fill out the form was the reason for denying light duty. Because light-duty work was denied, McCullough explained that the Grievant had to use sick leave. Finally, McCullough explained that Grievant never received an answer to his light duty request in writing as required by Article 13, Section 2.C.

#### Melody Davis-Finazzo

Ms. Davis-Finazzo has been the Postmaster of Havre De Grace since 2013 and this is the first Postmaster position that she has held. Davis-Finazzo explained this was the first time she has had to deal with a light duty request, and she consulted with the Baltimore District Occupational Health Nurse Administrator (OHNA). Davis-Finazzo explained that the original documents provided by Grievant were too vague. She wants to provide light duty to employees, but the form had to be filled out.

#### POSITION OF THE UNION

The Union complains that a local form is being used to achieve light duty. The form is not a negotiated one and also not an "official" form because it has no number. In addition to the fact that use of a local form is a contractual violation on its face, the Union has specific complaints about certain aspects of the form. The Union asserts the form inappropriately asks the

employee to affirm his medical problems are "not related to Postal Service employment." In addition, the Union claims the form is "illegal" asking the employee to consent to release medical information as well as providing a diagnosis and prognosis. Both of these requests violate the ELM and HIPAA law. The Union asks the arbitrator to order Management to cease and desist requiring employees to fill out the local form and that the Grievant be reimbursed for annual or sick leave he was improperly required to expend.

### POSITION OF THE POSTAL SERVICE

The Postal Service contends it is being charged with being too careful with its employees. The Grievant suffered a serious injury. The Employer should not be faulted for wanting to take care of its employee. Management is totally boxed in, a grievance is filed if light duty is not provided and a grievance is filed if an effort is made to obtain information that will be used to provide light duty.

The medical information provided by Grievant was lacking in specificity. After the grievant dropped off papers on March 20<sup>th</sup>, he was never heard from again until he returned to work on April 18<sup>th</sup> without medical restrictions. The medical information that was provided only contained limitations on total hours of work per day, divided into hours standing and walking. The form contained no information on pushing/pulling, standing/squatting, twisting from waist or knees or motor vehicle operation limitations. This lack of information does not protect the employee or the general public as he carries out his duties. Management asks that the grievance be dismissed in its entirety and that no remedy be provided.

### DISCUSSION

The National Agreement provides that "any full-time regular or part-time flexible employee recuperating from a serious illness or injury and temporarily unable to perform the assigned duties may voluntarily submit a written request to the installation head for temporary assignment to a light duty or other assignment." The phrase "may voluntarily submit" indicates the decision to request light duty is up to the employee, it is not something they have to do. The second part of the sentence simply says the employee request must be in writing. The National Agreement does not provide further guidance on the particulars of the written request. The Union argues that the contract only requires the request for light duty to be in writing and accompanied by

medical documentation. The Postal Service contends that completion of a locally developed form is necessary to support the request for light duty.

As the Step B decision indicates, there is at least one Step 4 pre-arbitration agreement (H7N-2D-C 42122) and six or more Step 4 decisions (H7N-5T-C 33892, H4N-5G-C 33464, H4N-5R-C 45671, H4N-5R-C 33102, H4N-5R-C 38655, H4N-5T-C 29994) which address the issue of local forms. The decisions, which are precedent setting on a nationwide basis, all make three fundamental points:

1. The issuance of local forms is governed by Sections 323 and/or 324 of the Administrative Support Manual (ASM).
2. The locally developed form at issue in the grievance was not promulgated in compliance with the ASM.
3. Therefore, Management must discontinue its use.

These National Level decisions are "on point" with the instant case. No evidence was introduced which suggested the locally developed form had been developed in accordance with the ASM and, as a result, its use must be discontinued.

The more difficult question in this case is the matter of an appropriate remedy. The Grievant testified that upon receiving a letter with a copy of the local form to complete from the Postmaster he shared it with a Union official. The Grievant was advised the form was "illegal" because it asked him to sign a release that would allow his Doctor to provide medical information to the Postal Service. The demand for a release was thought to be a violation of HIPAA. As such, the Grievant was advised to not complete the form and he did not. The Postal Service never heard from the Grievant again until he returned to work in a full duty capacity.

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) instructs how personally identifiable information maintained by healthcare and healthcare insurance providers should be protected from fraud and theft. In general, HIPAA protects individuals from unauthorized use or disclosure of any personal health information. HIPAA does not usually apply to employers. The exception would be with regard to safeguarding the confidentiality of protected health information in their possession. The Postal Service even has a properly authorized PS Form to address the issue. PS Form 2488, Authorization for Medical Report, is a release form to allow the Postal Service to obtain medical information from employees.



The extreme summary of this case would be that we have an employee who voluntarily chose not to provide information to the employer, on a locally developed form that has now been invalidated, based on incorrect legal advice provided to him. There is no question that all parties involved thought they were doing the right thing. There is also no question the employee was injured and was now being allowed to return to work in a light duty capacity. The only reason the employee was not allowed to return to work was his refusal to complete the now invalidated form. There was testimony the Grievant used sick leave in lieu of being granted light duty work. The unique factual circumstances of this case make it appropriate to award the Grievant 92 hours (4 hours @ 8 days and 6 hours @ 10 days) of sick leave.

AWARD

The grievance is sustained. The Postal Service shall cease and desist using the locally developed light duty medical form and the Grievant shall have 92 hours of sick leave restored.

Date of Award: December 2, 2020



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David A. Stanton, Arbitrator