

C-32491

Regular Arbitration Panel

In the Matter of the Arbitration)
)
 between)
)
 United States Postal Service)
)
 and)
)
 National Association of Letter Carriers,)
 AFL-CIO)
 _____)

Grievant: Feldmeier
 Post Office: Chattanooga, TN
 USPS Case No: C11N-4C-C 15332250
 NALC Case No: 15C115T
 DRT No: 08-353974

Before: Roberta J. Bahakel, J.D., Arbitrator

Appearances:

For the U.S. Postal Service: Dorthea Chatman

For the Union: Corey Walton

Place of Hearing: Chattanooga, TN

Date of Hearing: May 26, 2016

Date of Award: June 21, 2016

Relevant Contract Provision: Article 19, 29

Contract Year: 2011 - 2016

Type of Grievance: Contract

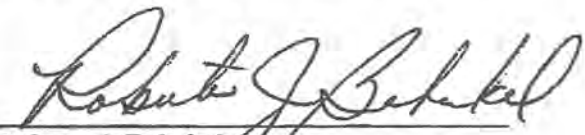
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Award Summary:

The Grievant suffered a seizure and was returned to full duty with no driving privileges for a six month period. Under the applicable provisions of the EL-804 and Article 29 the Grievant should have been given non driving work. The grievance is sustained.



 Roberta J. Bahakel

BACKGROUND

The Grievant, Mr. Feldmeier, has been employed by the Postal Service for more than 28 years. He lives in Georgia but works at the Eastgate Station in Chattanooga, Tennessee. On May 7, 2015 he went to the emergency room after running a high fever during the previous night. While at the ER the Grievant suffered a seizure due to his high fever and was hospitalized for approximately one week. His doctor returned him to work effective May 26, 2015 and noted that the Grievant was not able to drive until November 7, 2015. The Grievant contends that he must be seizure free for 6 months before being able to operate a motor vehicle in Georgia. The Grievant returned to work and gave his doctor's excuse to his supervisor, Ms. Rogers. Rogers arranged for the Grievant to work non driving duties at the downtown Chattanooga station. These duties included the delivery of mail on walking routes where the Grievant was taken to the route. The Grievant worked this position from May 26 through June 3, 2015. He was then told to return to the Eastgate station. At the station he was informed that he was scheduled to have a meeting regarding light duty. The Grievant did not attend this meeting because he had not requested light duty. After that date Management did not have work for the Grievant and he had to use his accumulated leave. The Grievant later acquired a letter from the Georgia Department of Transportation revoking his license due to the seizure. This letter was presented to Management on August 20, 2015. The next day Management placed the Grievant on non driving duties under Article 29. The Union filed this grievance alleging that Management violated Article 19 (by way of the EL-804, Safe Driving Program) and Article 29 of the National Agreement when it failed to place the Grievant on non driving duties after his return to work, even before Management received notice that the Grievant's license was suspended or revoked.

ISSUE

Did Management violate Articles 3, 15, 19 (EL-804, Section 421.11) and 29 of the National Agreement when they did not suspend Carrier Feldmeier's driving privileges and by failing to provide non-driving duties or pay in lieu thereof? If so, what is the appropriate remedy?

CONTRACT PROVISIONS

HANDBOOK EL-804 SAFE DRIVER PROGRAM

4 State Driver's Licenses

42 Suspension and Revocation of Driving Privileges

421 Reason for Suspension or Revocation

421.1 For Physical Condition

421.11 Responsibilities

Each employee must continue to meet the physical standards required to obtain a state driver's license or state CDL in the state that has granted the license.

Employees have a responsibility to inform their supervisors of any change in physical condition that may adversely affect their driving abilities.

Postal Service personnel may learn that an employee's physical condition is such that the employee's state driving privilege should be suspended. When this happens, the appropriate supervisor will consider suspending the employee's Postal Service driving privileges until the condition is corrected or under adequate control. See Exhibit 421.12.

421.12 Procedures

Exhibit 421.12

Procedures to Suspend or Revoke Postal Service Driving Privileges

| If a Postal Service... | Then the supervisor must... |
|--|--|
| Driving employee's state driving privilege is suspended or revoked | <ul style="list-style-type: none">■ Suspend or revoke the employee's Postal Service driving privileges. |
| Driving employee's physical condition is permanent | <ul style="list-style-type: none">■ Temporarily suspend Postal Service driving privileges and remove employee from any position that requires driving.■ Consult with the employee and medical personnel to determine if the employee is able to drive.■ Engage the District Reasonable Accommodation Committee (DRAC) interactive process. |
| Driving employee's physical condition may have changed | <ul style="list-style-type: none">■ Temporarily suspend Postal Service driving privileges.■ Consult with the employee and with Postal Service medical personnel.■ Engage the DRAC interactive process. |
| Driving employee requests reasonable accommodation | <ul style="list-style-type: none">■ Consult with the DRAC. |

421.2 For Unsafe Driving

421.21 On Duty Record

When the on-duty record shows that an employee is an unsafe driver, management may suspend or revoke the employee's Postal Service driving privileges. Elements of the on-duty record that may be used to suspend or revoke driving privileges include:

- a. Traffic law violations.
- b. Accidents.
- c. Failure to meet motor vehicle operational standards.
- d. Disregard for personal safety.

421.22 Procedures

The following guidelines apply:

- a. When management is considering the suspension, revocation, or re-issuance of an employee's driving privileges, the final determination must be based solely on the employee's on-duty driving record.
- b. Management must automatically:
 - (1) Suspend or revoke an employee's driving privileges when a state driver's license is suspended or revoked.
 - (2) Restore an employee's driving privileges when the state driver's license is restored.

424.3 Reassignment

When the driving privileges of a career bargaining unit employee are suspended or revoked, refer to Article 29 of the applicable collective bargaining agreement to determine whether rights or obligations exist concerning reassignment to non-driving duties.

ARTICLE 29

LIMITATION ON REVOCATION OF DRIVING PRIVILEGES

An employee's driving privileges may be revoked or suspended when the on-duty record shows that the employee is an unsafe driver.

Elements of an employee's on-duty record which may be used to determine whether the employee is an unsafe driver include but are not limited to, traffic law violations, accidents or failure to meet required physical or operation standards.

The report of the Safe Driver Award Committee cannot be used as a basis for revoking or suspending an employee's driving privileges. When a revocation, suspension, or re-issuance of an employee's driving privileges is under consideration, only the on-duty record will be considered in making a final determination. An employee's driving privileges will be automatically revoked

or suspended concurrently with any revocation or suspension of State driver's license and restored upon reinstatement. Every reasonable effort will be made to reassign such employee to non-driving duties in the employee's craft or in other crafts. In the event such revocation or suspension of the State driver's license is with the condition that the employee may operate a vehicle for employment purposes, the employee's driving privileges will not be automatically revoked. When revocation or suspension of an employee's driving privileges is under consideration based on the on-duty record, such conditional revocation or suspension of the state driver's license may be considered in making a final determination.

JOINT CONTRACT ADMINISTRATION MANUAL (JCAM)

ARTICLE 29

Every Reasonable Effort to Reassign. Even if a revocation or suspension of a letter carriers driving privileges is proper, Article 29 provides that, "every reasonable effort will be made to reassign the employee in non-driving duties in the employee's craft or other crafts." This requirement is not contingent upon a letter carrier making a request for non-driving duties. Rather, it is management's responsibility to seek to find suitable work.

National Arbitrator Snow held in I94N-4I-D 96027608, April 8, 1998 (C-18159), that management may not reassign an employee to temporary non-driving duties in another craft if doing so would result in a violation of other craft's agreement. If it is not possible to accommodate temporary cross-craft assignments in a way that does not violate another craft's agreement, a letter carrier who is deprived of the right to an otherwise available temporary cross-craft assignment to a position in another craft must be placed on leave with pay until such time as he may return to work without violating either unions' agreement. In accordance with Arbitrator Snow's award, in situations where city letter carriers temporarily lose driving privileges, the following applies:

- Management should first attempt to provide non-driving city letter carrier craft duties within the installation on the carrier's regularly scheduled days and hours of work. If sufficient carrier craft

work is unavailable on those days and hours, an attempt should be made to place the employee in carrier craft duties on other hours and days, anywhere within the installation.

- If sufficient work is still unavailable, a further attempt should be made to identify work assignments in other crafts, as long as placement of carriers in that work would not be to the detriment of employees of that other craft.

- If there is such available work in another craft, but the carrier may not perform that work in light of the Snow award, the carrier must be paid for the time that the carrier otherwise would have performed that work.

ARTICLE 13

ASSIGNMENT OF ILL OR INJURED REGULAR WORKFORCE EMPLOYEES

Section 1. Introduction

A. Part-time regular schedule employees assigned in the craft unit shall be considered to be in a separate category. All provisions of this Article apply to part-time regular schedule employees within their own category.

B. The U.S. Postal Service and the Union recognizing 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.

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.

JOINT CONTRACT ADMINISTRATION MANUAL (JCAM)
ARTICLE 13

The provisions of Article 13 govern voluntary requests for light duty work by employees who are temporarily or permanently incapable of performing their normal duties as a result of illness or injury.

DISCUSSION

I have reviewed the testimony and exhibits presented at the hearing and considered the closing arguments of the parties. No issue was raised as to the arbitrability of this matter, therefore it is properly before me for decision.

The Union contends that once the Grievant had a seizure that he was, under Georgia law, ineligible to drive for a period of six months and his doctor returned him to work with no driving duties for six months in compliance with that requirement. Based on the provisions of Article 29 and the EL 804, Section 421.12 the Union contends that Management had a duty to temporarily suspend the Grievant's driving privileges and to offer the Grievant non driving duties, or pay in lieu thereof. The Union argues that Article 13 deals with employees voluntarily requesting light duty and the Grievant did not make such a request, nor was he required to, therefore Article 13 has nothing to do with the grievance in this case. Management contends that this is an Article 13 case and is not governed by Article 29 and the EL-804. Management argues that the Local Memorandum of Understanding states in part as follows:

"Due to the difficulty of deciding in advance on a suitable occupation for an ill or injured employee without prior knowledge of the handicap, it is agreed that management will make every effort to find suitable work in the Carrier Craft before the employee applies in writing for either a temporary or permanent light

duty assignment. It is agreed that the following procedures shall be followed in the Chattanooga, Tennessee Post Office:

The employee will provide his/her immediate supervisor or manager sufficient medical information so the management can make a reasonable effort to provide the employee with a temporary light -duty assignment, within the employee's work unit and within the employee's physical restrictions.

When an employee knows in advance of his/her return to work date and has medical documentation that outlines his/her physical restrictions, he/she will make every effort to provide management with a copy of those restrictions prior to the date of his/her return to work (via fax or mail). Management will attempt to develop a temporary light duty assignment prior to the employees release to duty date and inform them whether a temporary light duty job has been provided. A written job offer will be provided to the installation head and the President NALC, Branch 62 for review. If Management fails to notify the employee prior to the release to duty date, the employee will then submit a request in writing for a temporary light duty hearing to the Installation Head."

Management argues that the LMOU addresses the situation here and that Article 13 is the proper provision to be applied to the Grievant's situation. Management contends that it did provide temporary light duty for the Grievant in accordance with the LMOU, but that the Grievant later refused to attend a light duty meeting.

Management also contends that the Article 29 language is permissive in nature and does not require Management to suspend the Grievant's driving privileges or offer the Grievant non driving duties unless the Grievant's license has been suspended or revoked by the licensing state. Management argues that once the Grievant submitted evidence on August 20, 2015 that his license had been revoked, Management immediately assigned the Grievant to non driving duties in compliance with Article 29.

The parties here disagree as to which Article of the National Agreement applies to the Grievant's situation. Management argues that Article 13 is controlling, while the Union contends that Article 29 and the EL 804 were violated. The evidence presented at the hearing

showed that the Grievant, while in the Emergency Room, had a seizure due to a high fever and was subsequently hospitalized for approximately one week. The Grievant's doctor returned him to work with no physical restrictions, but, due to the seizure, did not return him to driving duties for a six month period. Upon the Grievant's return to work Management provided him with non driving duties in the letter carrier craft. Management contends that its actions were in compliance with the LMOU which sets out that Management will "make every effort to find suitable work in the Carrier Craft before the employee applies in writing for either a temporary or permanent light duty assignment". The Union contends that Management's actions were in compliance with the EL-804 and Article 29. After the Grievant had performed the assigned non driving duties for approximately one week, Management set up a light duty meeting for the Grievant. When the Grievant was informed of the purpose of the meeting, he stated that he had not requested light duty and would not attend the meeting. After that the Grievant was sent home and was informed that there was no work available within his restrictions.

In regard to this disagreement over the applicable contract provision I have considered Management's position is that Article 13 is the proper Article to be applied in the Grievant's situation in conjunction with the terms of the LMOU that anticipate that an ill or injured employee will request light duty. The Article 13 section of the JCAM states:

"The provisions of Article 13 govern voluntary requests for light duty work by employees who are temporarily or permanently incapable of performing their normal duties as a result of illness or injury".

That section establishes that Light duty requests are voluntary and that employees who are incapable of performing their regular duties can make such a request. It is up to an employee to activate the provisions of Article 13 by making a light duty request and supporting that request with medical documentation. The language of the LMOU cannot override the express provisions of the National Agreement. Article 13 clearly states that requests for light duty are voluntary. The LMOU cannot require the Grievant to request light duty work and Management cannot make the determination that an employee should apply for light duty. The Grievant was in a situation where he was able to perform his normal duties without restriction, but, because of a Georgia law that requires drivers to be seizure free for a six month period, he was not allowed to drive. His

situation did not fall within the parameters of Article 13. Without a light duty request by the Grievant, it is my determination that Article 13 would not apply here.

Chapter 4 of the EL-804, Safe Driver Program, provides Management with a guide for determining when an employee's postal driving privileges should be suspended or revoked. Section 421.1 addresses suspension or revocation for a physical condition while Section 421.2 addresses revocations for unsafe driving. The language of Article 29 tracks more closely with the provisions of Section 421.2. The Grievant's particular situation spans both sections. Section 421.11 clearly requires an employee to continue to meet the physical standards required to obtain a state drivers license. Here the Grievant, due to his seizure, failed to meet the required driver standards of the State of Georgia. While the parties disagree as to exactly what those standards require, the evidence showed that once Georgia was made aware of the medical documentation regarding the Grievant's seizure, it revoked the Grievant's license. That is sufficient to satisfy this Arbitrator that the Grievant failed to meet the required physical or operational standards required to maintain his license in Georgia.

Section 421.11 also provides that employees "have a responsibility to inform their supervisors of any change in physical condition that may adversely affect their driving abilities". The Grievant notified Management that he had suffered a seizure which would affect his ability to be licensed in Georgia. Section 421.11 goes on to state that "Postal Service personnel may learn that an employee's physical condition is such that the employee's state driving privilege should be suspended. When this happens, the appropriate supervisor will consider suspending the employee's Postal Service driving privileges until the condition is corrected or under adequate control". While this language is permissive and only requires Management to consider a suspension, Section 421.11 goes on to refer to Exhibit 421.12 which sets out more specifically the various situations where an employee's license should be suspended or revoked and the procedures to be followed when that need occurs.

The Union relies on the language in the third block of Exhibit 421.12 which states "if a Postal Service driving employee's physical condition may have changed ... then the supervisor must temporarily suspend Postal Service driving privileges, consult with the employee and with Postal Service medical personnel, and engage the DRAC interactive process." The

Union contends that this language would require Management to temporarily suspend the Grievant's driving privileges. The Union argues that Management neither temporarily suspended the Grievant's driving privileges, consulted with the Grievant or the Postal Service medical personnel, nor engaged the DRAC process. It is the Union's position that when an employee's driving privileges have been suspended as required by the EL-804 then the provisions of Article 29 require Management to find the Grievant non driving work or pay him in lieu thereof.

Management contends that a different part of the Exhibit 421.12 applies. Management argues that the proper language to be followed is in the first block of Section 421.12, which sets out that "if a postal service driving employee's state driving privilege is suspended or revoked ... then the supervisor must suspend or revoke the employee's Postal Service driving privileges." This same language is found in Article 29. Management argues that when it was notified on August 20, 2015 that the Grievant's driving privileges had been revoked by the state of Georgia, it immediately provided the Grievant with non-driving duties as required by Article 29. There is no argument that Management did not comply with this language.

The language of EL-804, Section 421.12 relied on by the Union clearly anticipates that there will be situations where changes in an employee's physical condition will require the temporary suspension of postal driving privileges. Such a change in physical condition may or may not result in the employee's state driving privilege being suspended or revoked and could be as simple as a broken bone that inhibits the employee's ability to drive. In this case, the Grievant suffered a seizure and as a result his doctor, being aware of Georgia's driving statutes, returned the Grievant to work with no driving for a period of six months. The Grievant's physical condition changed when he suffered a seizure. As required by Section 421.11 the Grievant notified Management that due to the seizure he no longer met the physical standards required by the state of Georgia for obtaining a license. Under the provisions of the EL-804, Section 421.12, which state "where an employee's physical condition may have changed", Management "must" temporarily suspend the Grievant's driving privileges. While Management clearly complied with the particular provisions of Exhibit 431.12 that it relies on when it placed the Grievant on non driving duties after receiving notice of his license revocation from Georgia, that Exhibit also requires temporary suspension when a situation such as the Grievant's arises.

In this particular situation Section 421.2 would also apply. This provision allows for suspension of an employee's driving privileges if the on duty record shows a failure to meet motor vehicle operational standards. The applicability of Section 421.2 will be discussed below in conjunction with the requirements of Article 29.

Once an employee's driving privileges have been suspended or revoked either due to the employee's physical condition as provided in Section 421.1 or because the employee has been found to be an unsafe driver under Section 421.2, Section 424.3 of the EL-804 provides:

"Reassignment

When the driving privileges of a career bargaining unit employee are suspended or revoked, refer to Article 29 of the applicable collective bargaining agreement to determine whether rights or obligations exist concerning reassignment to non-driving duties.

At this point the provisions of Article 29 would come into play. Article 29 states:

"An employee's driving privileges may be revoked or suspended when the on-duty record shows that the employee is an unsafe driver. Elements of an employee's on-duty record which may be used to determine whether the employee is an unsafe driver include but are not limited to...failure to meet required physical or operation standards."

This language follows more closely with the provisions of EL-804, Section 421.2 than Section 421.1, but in this case both sections apply to the Grievant's situation. By virtue of his seizure not only did the Grievant's physical condition change, but he also was deemed to no longer meet the physical and operational standards for the state of Georgia where his license was issued.

The intent of Article 29 is to place limitations on when Management can suspend or revoke an employee's postal driving privileges. While this language is permissive and states that the driving privileges "may" be revoked, the language of Section 421.12 requires that driving privileges "must" be temporarily suspended when an employee's physical condition may have changed. The evidence showed that after his seizure the Grievant's physical condition had changed enough that he failed to meet Georgia's required physical or operational standards for maintaining a license. That seizure also caused the Grievant to be classified as an unsafe driver under the language of Article 29. Because of the Grievant's unique situation he falls under the

provisions of both Section 421.1 and 421.2. Under Section 421.12 Management "must" temporarily suspend the Grievant's driving privileges. Under Section 421.2 and the language of Article 29 the Grievant qualifies as an "unsafe driver" due to his failure to meet the physical and operational standards required to maintain his license in Georgia.

The JCAM, Article 29 sets out that where a revocation or suspension of driving privileges is proper that:

"Article 29 provides that 'every reasonable effort will be made to reassign the employee in non-driving duties in the employee's craft or other crafts. This requirement is not contingent upon a letter carrier making a request for non-driving duties. Rather, it is management's responsibility to seek to find suitable work'".

The JCAM goes on to state that:

"In accordance with Arbitrator Snow's award, in situations where city letter carriers temporarily lose driving privileges, the following applies:

- Management should first attempt to provide non-driving city letter carrier craft duties within the installation on the carrier's regularly scheduled days and hours of work. If sufficient carrier craft work is unavailable on those days and hours, an attempt should be made to place the employee in carrier craft duties on other hours and days, anywhere within the installation.

- If sufficient work is still unavailable, a further attempt should be made to identify work assignments in other crafts, as long as placement of carriers in that work would not be to the detriment of employees of that other craft.

If there is such available work in another craft, but the carrier may not perform that work in light of the Snow award, the carrier must be paid for the time that the carrier otherwise would have performed that work."

After reviewing the testimony and evidence presented it is my determination that both Sections 421.1 and 421.2, as well as Article 29, applied to the Grievant's unique situation. Section 421.12 of the EL-804 required Management to temporarily suspend the Grievant's driving privileges due to a change in his physical condition. Additionally, when the Grievant was not able to meet Georgia's licensing requirements he then met the qualifications of an unsafe

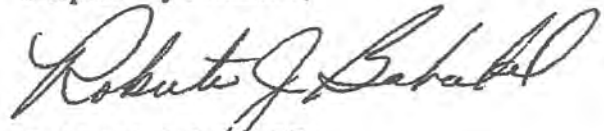
driver as set out in Section 421.2 of the EL-804 and Article 29. The direct language of the EL-804 requiring a temporary suspension overrides the permissive language of Article 29 that an employee's driving privileges "may" be suspended or revoked. The determination to suspend driving privileges is in many cases a subjective decision arrived at after considering a particular fact situation and applying those facts to the provisions of Article 29. In this situation, the Grievant's failure to meet the physical and operational standards required to maintain his license is an objective determination. Based on the applicable provisions of Section 421.12 the Grievant's driving privileges "must" be suspended. The failure to meet physical and operational standards classifies the Grievant as an unsafe driver under Article 29 even if the affected state has not yet acted to suspend the Grievant's license. Once an employee's driving privileges have been suspended, Article 29 obligates Management to provide non driving work. In this case Management did not suspend the Grievant's driving privileges or provide the Grievant with non driving work, therefore the grievance is due to be sustained.

DECISION

The grievance is sustained. The Grievant's sick and annual leave utilized during the period from June 4, 2015 until August 20, 2015 shall be converted to Administrative Leave. The dates of June 22-27, 2015 and July 27 - August 1, 2015 shall be excluded from this award due to being prior requested prime time annual leave. I will retain jurisdiction over this matter as to the calculation of remedy only for a period of 120 days.

Done this 21st day of June, 2016.

Respectfully submitted,



Roberta J. Bahakel, J.D.
Arbitrator