REGULAR ARBITRATION PANEL

IN THE MATTER OF ARBITRATION BETWEEN UNITED STATES POSTAL SERVICE AND AMERICAN POSTAL WORKERS UNION, AFL-CIO	Grievant – Ginger Haaland Post Office – Fargo, ND USPS Case # E11C-4E-C-12227547 APWU Case # 88DK6112

BEFORE:	Jon Numair, Arbitrator
APPEARANCES:	
For the U.S. Postal Service:	Nancy J. Brewer, Manager, Labor Relations
For the American Postal Workers Union:	Willie Mellen, National Business Agent
Place of Hearing:	Fargo, ND
Date of Hearing:	September 21, 2012
Date of Award:	October 19, 2012
Relevant Contract Provisions:	Articles 13 and 30; LMOU, Items 15, 16, 17
Contract Year:	2010-2015
Type of Grievance:	Contract

Award Summary:

For reasons discussed herein, the Employer violated the Collective Bargaining Agreement when the grievant was assigned to work less than eight hours per day or 40 hours per week while on light duty for the period June 11 through July 10, 2012. She shall be made whole for all lost wages and benefits, including the restitution of leave used to supplement her work hours during this period.

Jon Numair, Arbitrator

ISSUE

The parties could not agree on an issue statement although their submissions were somewhat similar. They agreed at the hearing to let the Arbitrator frame the issue. The Employer submitted the issue as:

> *Did Management violate Article 13 of the National Agreement or the Local Memorandum of Understanding regarding light duty assignments when the grievant, Ginger Haaland was granted a temporary light duty assignment but sent home with less than eight hours of work when no available work was identified within her restrictions?* [1]

The Union submitted the issue as:

> *Did the Employer violate the Collective Bargaining Agreement the LMOU, and/or the applicable handbooks and manuals when they denied the Grievant light duty work beginning June 13, 2012? If so, what shall the remedy be?* [2]

The Arbitrator frames the issue as follows:

> Did the Employer violate the Collective Bargaining Agreement and/or the Local Memorandum of Understanding (LMOU), when the grievant was given a light duty assignment that did not consistently provide eight hours of work per day? If so, what is the appropriate remedy?

BACKGROUND

The grievant is a Clerk Craft employee who has been on approved light duty for an extended period of time – some ten years. On June 11, 2012, she submitted a new request for light duty due to additional work restrictions added by a new physician. [3] The grievant continued to perform duties she previously performed on her former light duty assignment on June 11 and 12, working eight hours each day. Notwithstanding the fact that she worked a full eight hours on June 12, sometime that day, her supervisor checked a box on the request form that *"work within the stated physical limitations is not available."* [4] On June 13, she was sent home after working only .77 hours. On June 14, the Postmaster disapproved her request, informing her there was

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[1] Employer's Opening Statement
[2] Union's Opening Statement
[3] Joint Exhibit #5
[4] Joint Exhibit #7

"no job available that meets restrictions". [5] This response was modified shortly thereafter. The modified response provided work, but restricted that work to CIOSS waste mail. [6] Over the course of the next few weeks, the grievant worked less than eight hours on most days due to insufficient CIOSS workload and some other days was told there was no work for her at all. On July 10, 2012, her work restrictions were modified again, this time eliminating most of the restrictions added the previous month. Her light duty assignment was then modified, basically reverting to the previous assignment in which she regularly worked eight hour days. [7] Therefore, the specific timeframe for the dispute in this case is for the period of June 11 through July 10, 2012.

The grievance, filed on June 19, 2012, contested the Employer's failure to provide eight hours of work in response to the new limitations of June 11. The grievance properly moved through the grievance-arbitration process and was appealed to arbitration on August 13, 2012. [8] There were no threshold issues and no challenge to the arbitrability of the grievance.

RELEVANT CONTRACTUAL PROVISIONS

ARTICLE 13 ASSIGNMENT OF ILL OR INJURED REGULAR WORKFORCE EMPLOYEES

Section 1. Introduction

A. Part-time fixed 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 fixed 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

[5] Joint Exhibit #7
[6] Joint Exhibit #8
[7] Joint Exhibit #13
[8] Joint Exhibit #2 – Moving Papers

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 Public Health Service doctor or 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 requiring light duty or other assignments, giving each request careful attention, and reassign such 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 reasons for the inability to reassign the employee.

Section 3. Local Implementation

Due to varied size installations and conditions within installations, the following important items having a direct bearing on these reassignment procedures (establishment of light duty assignments) should be determined by local negotiations.

A. *Through local negotiations, each office will establish the assignments that are to be considered light duty within each craft represented in the office. These negotiations should explore ways and means to make adjustments in normal assignments, to convert them to light duty assignments without seriously affecting the production of the assignment.*

B. *Light duty assignments may be established from part-time hours, to consist of 8 hours or less in a service day and 40 hours or less in a service week. The establishment of such assignment does not guarantee any hours to a part-time flexible employee.*

C. *Number of Light Duty Assignments. The number of assignments within each craft that may be reserved for temporary or permanent light duty assignments, consistent with good business practices, shall be determined by past experience as to the number of reassignments that can be expected during each year, and the method used in reserving these assignments to insure that no assigned full-time regular employee will be adversely affected, will be defined through local negotiations. The light duty employee's tour hours, work location and basic work week shall be those of the light duty assignment and the needs of the service, whether or not the same as for the employee's previous duty assignment.*

Section 4. General Policy Procedures

A. Every effort shall be made to reassign the concerned employee within the employee's present craft or occupational group, even if such assignment reduces the number of hours of work for the PSEs. After all efforts are exhausted in this area, consideration will be given to reassignment to another craft or occupational group within the same installation.

B. The full-time regular or part-time flexible employee must be able to meet the qualifications of the position to which the employee is reassigned on a permanent basis. On a temporary reassignment, qualifications can be modified provided excessive hours are not used in the operation.

C. The reassignment of a full-time regular or part-time flexible employee to a temporary or permanent light duty or other assignment shall not be made to the detriment of any full-time regular on a scheduled assignment or give a reassigned part-time flexible preference over other part-time flexible employees.

D. The reassignment of a full-time regular or part-time flexible employee under the provisions of this Article to an agreed-upon light duty temporary or permanent or other Article 13.4.G assignment within the office, such as type of assignment, area of assignment, hours of duty, etc., will be the decision of the installation head who will be guided by the examining physician's report, employee's ability to reach the place of employment and ability to perform the duties involved.

E. An additional full-time regular position can be authorized within the craft or occupational group to which the employee is being reassigned, if the additional position can be established out of the part-time hours being used in that operation without increasing the overall hour usage. If this cannot be accomplished, then consideration will be given to reassignment to an existing vacancy.

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ARTICLE 30 LOCAL IMPLEMENTATION

A. *Presently effective local memoranda of understanding not inconsistent or in conflict with the 2010 National Agreement shall remain in effect during the term of this Agreement unless changed by mutual agreement pursuant to the local implementation procedure set forth below or, as a result of an arbitration award or settlement arising from either party's impasse of an item from the presently effective local memorandum of understanding.*

B. *There shall be a 30 consecutive day period of local implementation which shall occur within a period of 60 days commencing August 1, 2011 on the 22 specific items enumerated below, provided that no local memorandum of understanding may be inconsistent with or vary the terms of the 2010 National Agreement:*

. . . .

15. The number of light duty assignments within each craft or occupational group to be reserved for temporary or permanent light duty assignment.

16. The method to be used in reserving light duty assignments so that no regularly assigned member of the regular work force will be adversely affected.

17. The identification of assignments that are to be considered light duty within each craft represented in the office.

Local Memorandum of Understanding

Item 15. The number of light duty assignments within each craft or occupational group to be reserved for temporary or permanent light duty assignment.

A. *Light duty assignments shall be made available on all tours.*

B. *When an employee is place on a Light Duty Assignment in accordance with Article 13 of the National Agreement, any duties performed on his/her regular job assignment that do not conflict with the Light Duty Assignment and not prohibited by required medical evidence will continue to be performed by the employee.*

Item 16. The method to be used in reserving light duty assignments so that no regularly assigned member of the regular work force will be adversely affected.

Light duty assignments shall be made available on all tours.

Item 17. The identification of assignments that are to be considered light duty within each craft represented in the office.

A. *Any type of letter, second or third class mail distribution, may be considered as light duty as well as including boxing limited amounts of mail, or such other duties as may be within the capabilities of the employee concerned.*

B. *In accordance with Article 13 of the National Agreement, the following assignments are defined as Light Duty within the Clerk Craft.*

C. *The following is identified as Assignment:*
Number One (1): Sorting mail into sorting cases that does not require scheme knowledge plus boxing mail into customer rental boxes.

Number Two (2): Culling, facing and traying mail plus sorting mail into sorting cases that can or cannot require scheme knowledge.

Number Three (3): Two (2) assignments consisting of a combination of Assignment Number one (1), and Assignment Number two (2). These two (2) assignments will be identified as Assignment three "A" (3-A), and three "B" (3-B).

D. *Light duty assignments shall be made available on all tours.*

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FACTS AND CONTENTIONS

THE POSITION OF THE UNION

The union stated their arguments in their opening statement as follows:

Article 13 of the Collective Bargaining Agreement along with Article 30 provides the parties a mechanism to establish light duty assignments, both permanent and temporary. Article 13 of the CBA is quite clear that it requires Management to give "careful attention", "greatest consideration" and to make "every effort" to find an appropriate light duty assignment. In the case before us the Grievant was working in a light duty assignment. Management made an arbitrary decision that the Grievant could no longer work in, at least, two areas she previously had been working…

…Management made no real attempt to find light duty or to work the grievant within her restriction in work she had been doing for years. They failed in their burden to make every effort.

To support those arguments, the Union presented testimony and evidence as to duties the grievant previously performed and other duties that were available for her to perform with either minor modification or on some sort of rotation as to not have her exceed some of her limitations.

Local Union President Dana Klassen testified that he prepared and filed the step 1 grievance, filed and met on the step 2 appeal, and made the appeal to step 3. In an operation by operation review during his testimony, Klassen identified work that, in his opinion, could have been performed by the grievant during the timeframe in dispute, within her restrictions. Some of this is work she performed under her previous light duty assignment and some was new work. He testified that none of these assignments would have displaced other employees. He further testified that his familiarity with the work, the physical requirements of performing it, and when it was performed was based on his 27 years of experience in the facility, his analysis of overtime utilization during the disputed period, and discussions with other employees as to work that was available.

Klassen testified that he prepared a time log showing the amount of work grievant was allowed to perform each day during the disputed period.[9] She worked full days on June 11 and 12, despite the new restrictions; performing the same work she previously was assigned. On June 13 she was sent home without working eight hours. When asked if the work she performed on the 11th and 12th was outside her restrictions, Klassen opined that it was not. He stated his understanding of the Employer's objection was that manual casing of letters involved reaching above her shoulder, one of the new restrictions. He responded that he believed the Grievant could perform such work by standing for limited times to case those letters in bins that would require such reaching, as she did on the 11th and 12th.

[9] Joint Exhibit #4

The Grievant testified that while on the new light duty assignment she continued to work her normal schedule of 6:00pm – 2:30am. When she worked on June 11 and 12, performing manual casing of letters, she worked within her limitations. She either stood up or placed letters off to the side if they needed to be placed in the top row of the case. She testified that those top rows do not contain high volume destinations, so there was limited amounts for those cubby holes.

She also testified regarding her ability to perform a number of work processes previously identified by Klassen as work she could accomplish. The essence of which was that after 10 years on light duty, she had developed efficient workarounds to complete certain tasks. Taking handfuls of mail at a time to avoid excessive lifting; using powerlifting techniques to avoid bending at the waist; standing to reach higher cubby holes or putting mail off to the side and then putting it directly into overflow trays; operating mail carts (WUC's) at different angles to retrieve mail and avoid bending at the waist. During the hearing, the Advocates, the Grievant, and the Arbitrator took a tour of the operations. During this tour the grievant demonstrated many of these workarounds.

As to remedy, the Union requests,

> *The Arbitrator to sustain the grievance in its entirety, including but not limited to, all lost work hours, restoration of Annual and Sick Leave balances, restoration of TSP contributions and to make the grievant whole.* [10]

In support of its arguments, the Union cited the following decisions: W7T-5S-C-33170 (Ernest E. Marlatt, Midland, TX, April 24, 1992), E7C-2L-C-35041 (Joseph A. Sickles, Columbus, OH, December 26, 1991), W1C-5F-C-234 (George E. Bowles, Denver, CO, November 18, 1983), E7C-2N-C- 44873 (Linda DiLeone Klein, Cincinnati, OH, March 4, 1994), C1C-4B-C-25077 (George T. Roumell, Jr., Ann Arbor, MI, October 31, 1984).

THE POSITION OF THE EMPLOYER

The Employer's position, as contained in their opening statement,

> *The main facts in this grievance are not in dispute. The grievant provided Management at the Fargo P&DC a request for light duty work with revised medical restrictions on June 11, 2012. These restrictions specified "no bending @ waist"; no reaching above shoulder level; no walking for more than 20 min/hour and no standing for more than 20 min/hour. Viewing these extreme*

[10] Opening Statement of the Union

limitations, MDO JoAnn Staub initially denied the request on June 12, 2012, indicating there was no work that she could identify within the restrictions. After further review, it was determined that indeed the grievant could go through the CIOSS waste mail within her limitations. The Grievant's request for temporary light duty was approved on June 14, 2012 with CIOSS work identified.

Subsequently, management evaluated on a daily basis what duties were available within the Grievant's extreme limitations. SDO Lanette Weber and Postmaster Greg Johnson reviewed what duties were available not only on the Grievant's tour but also tours 1 and 2 and what duties may have been available at the stations. They also considered work in the Mail Handler and Carrier crafts as testimony today will reveal. After all was considered, only the CIOSS mail was identified as consistent work that was available within the Grievant's restrictions. The Grievant would report to work as scheduled and when the CIOSS mail was completed and no other duties identified, she was sent home.

. . . .

However, the Union would contend that Management, in accordance with the language in the Fargo LMOU item 15.A which states "Light duty assignments shall be made available on all tour." has an obligation to provide a full eight (8) hour assignment to any APWU employee requesting light duty accommodations.

Management does not agree with the Union's interpretation of this language and asserts that it merely provides that an assignment shall be made available. Arbitrator Mittenthal in National level arbitration decisions has affirmed that Management does not have an obligation to provide eight hours of work to a full time employee requesting light duty if such work is not available and not within the medical restrictions of the employee.

. . . .

Once the light duty assignment was granted, each day a determination was made as to whether additional duties were available.

Supervisor Lanette Weber testified to her involvement in the case. She worked a schedule of 11am to 8pm. She stated that when she received the new request for light duty she forwarded it to Postmaster Johnson. She and the Postmaster discussed potential work assignments. She testified that she thought casing manual letters "might not be a good possibility", but that Johnson was going to further discuss with MDO JoAnn Staub, who worked a shift beginning at 8pm. She also testified they considered the "hand cancel" operation, but that it involved walking around and she was concerned about the walking restriction. She also

expressed concern over the Grievant's use of WUC's, in that it involved walking and bending. She said she considered the lifting restriction in making a decision on accommodation.

Postmaster Greg Johnson testified that he only spoke with SDO Weber of the request and possible assignments. He testified that he performed a thorough search for work for her and could only identify the CIOSS work. Johnson also dismissed some of the work Grievant had previously performed, such as hand cancel, manual letters, or assignments to other crafts and tours as being beyond her restrictions. When challenged on cross-examination as to whether he inquired about workplace modifications or workarounds such as those employed by the Grievant on June 11 and 12, Johnson replied he did not seek such input as he thought standing to throw manual letters exceeded her limitations. Of the other workarounds the Grievant stated she utilized, he did not believe them to be feasible.

In support of their presentation, the Employer cited the following decisions: H1C-4E-C-35028 (Richard Mittenthal, National Level Decision, Cleveland, OH, June 12, 1987), HiC-3T-C-18210 (Richard Mittenthal, National Level Decision, Oklahoma City, OK, June 25, 1984), B00C-1B-C-04169641, (Randall M. Kelly, Queens P&DC, February 29, 2012), K06V-1K-C-08373306 (Andrew M Strongin, Washington NDC, October 6, 2010), E06N-4E-C-10368013 (Joseph W. Duffy, Phoenix, AZ, July 10, 2011), B06M-1B-C-10136673 (Sherrie Rose Talmadge, Esq, NJ NDC, May 9, 2011).

ANALYSIS AND OPINION

The disagreement in this case centers on the extent of the Employer's obligation to an employee when that employee requests light duty. Although there might have been Union argument made during the grievance procedure that employees on light duty are guaranteed 40 hours of work per week, that was not part of the Union's argument in the hearing.

The Employer insists it met its contractual duty when they approved the Grievant's request and assigned her to work the CIOSS waste mail. Inferred in their position is that once they determined that was the only work she could perform within her medical limitations, they had no obligation to consider additional work assignments if there was insufficient CIOSS mail to keep her occupied for an eight hour shift. Although the Employer argued in their opening that a day by day determination was made regarding available work the Grievant could perform, there was no evidence or testimony that this actually happened.

The Union has no dispute with the CIOSS assignment. They argue there was additional work the Grievant could perform, within her restrictions, and that by limiting her to only CIOSS mail even when there was insufficient work in that operation, the Employer failed in their

obligation to provide her work. Again, not that there is a guarantee, but that the Employer failed to meet its Article 13 obligations.

To help frame the dispute, it would be beneficial here to state the Grievant's limitations. The light duty request for the period in dispute places the following limitations on the grievant for the period of June 11, 2012 through *"permanent"*.

- *Should not lift more than 30 pounds from floor level and should not lift more than 30 pounds from waist level*
- *Should not reach above shoulder level*
- *Walking should be limited to 20 minutes per hour and 2 hours per day*
- *Standing should be limited to 20 minutes per hour and 4 hours per day*
- *Sitting should be limited to 60 minutes per hour and 8 hours per day*
- *Able to work 6-8 hours per day and 40 hours per week*
- *No bending at waist* [11]

The parties stipulated that the lifting, walking, and standing restrictions were unchanged from her limitations prior to June 11. The only changes were to the reaching and bending limitations. Then on July 10, the *"reaching above shoulder level"* was lifted and the *"no bending at waist"* was changed to *"limit bending at waist."* [12] With these changes she resumed her former duties and apparently a 40 hour per week work schedule. As stated previously, the timeframe for this dispute is specifically the June 11 through July 10, 2012 period when the more restrictive limitations were in place.

There was much testimony regarding other work that the Grievant could have performed and the day to day fluctuations of that work, and that testimony is helpful in establishing other available work. However, the crux of the dispute goes to the light duty assignment approval by Postmaster Johnson that limited the grievant to "CIOSS mail only". [13] There was no testimony that other work could have or would have been assigned to the Grievant, even if available, once the formal light duty assignment limited her to the CIOSS work. The Union argues the Employer failed to meet the "greatest consideration" and "careful attention" standards of Article 13, Section 2.C when they "approved", but limited, the Grievant's light duty assignment to CIOSS mail.

This contrasts with the Employer's framing of the issue and thus, their view that they did not violate the Agreement. The Employer, as noted above, suggested the following issue statement:

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[11] Joint Exhibits #5 and #6
[12] Joint Exhibit #13
[13] Joint Exhibit #8

> *Did Management violate Article 13 of the National Agreement or the Local Memorandum of Understanding regarding light duty assignments when the grievant, Ginger Haaland was granted a temporary light duty assignment but sent home with less than eight hours of work when no available work was identified within her restrictions?*

By stating the issue this way, the Employer seems to be saying, "*We granted a light duty assignment. There is no contractual violation if there was insufficient work in that assignment to keep the Grievant busy.*"

As previously noted, the Union cited numerous cases in support of its position that the Employer failed to meet their obligation in this case. Although these cases concern different aspects of the Employer's obligation to employees in need of light duty, they mostly have one thing in common. That is, the arbitrators' view that the Employer's obligation is more than a cursory, fleeting consideration. Some also hold that once the Union makes it prima facie case, the Employer carries the burden to show it complied with the requirements of Article 13

Arbitrator Marlatt observed the following,

> *"Supervisors tend to treat medical restrictions with relentless inflexibility. If an employee has a ten-pound lifting limitation, the supervisor will allow the employee to lift nine-pound parcels all day long, but if an eleven-pound parcel slips through and the employee picks it up, the supervisor begins a frantic search for a Form CA-2 as he waits to hear the bones snap…. In determining whether certain light duty work is within an employee's medical restrictions, a supervisor has to rely on a degree of common sense."* [14]

Arbitrator Sickles analyzes the Employer's obligation as follows:

> *It is apparent, both from a reading of the Collective Bargaining Agreement and the cited awards, that the Service is not required to grant light duty concerning each and every request, but it is obligated to take* ***extraordinary*** *steps in an attempt to accommodate the employee if at all possible. A requirement to extend "every effort" and "show the* ***greatest*** *concern" goes far beyond a simple requirement to make a minimal overview of the situation. It is a positive requirement and creates an affirmative duty to explore job potential. Further, I have no significant dispute with the stated concept that the Employer has the burden of proof concerning compliance with the obligation."* [15]

Arbitrator Bowles's decision includes the following in considering the Article 13 obligation,

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[14] W7T-5S-C-33170 (Ernest E. Marlatt, Midland, TX, April 24, 1992)

[15] E7C-2L-C-35041 (Joseph A. Sickles, Columbus, OH, December 26, 1991) Underlining and **bold** in original text

> *"This is not an unqualified or absolute Employer obligation… But it is a significant obligation, and in contested hearing the Employer must make its affirmative or positive showing of a good-faith effort to put the employee on light duty assignment….The Employer has the risk of persuasion or of convincing the Arbitrator that it has discharged its affirmative obligation to place the Grievant in a light duty assignment."* [16]

Arbitrator Roumell reviewed the Employer's actions negatively when they interrupted the light duty employee's work and denied light duty.

> *"…one begins with the proposition that on October 24, 1983, the morning that Mrs. Wardle brought in Dr. Castillo's statement, she was performing needed duties for the Service. The Service apparently found that these duties were being performed efficiently and satisfactorily. There was nothing on this record to suggest otherwise… Ms. Wardle was doing the work. There is no evidence that she was doing the assigned work in an unsafe manner or outside her limitations."* [17]

Cases submitted by the Employer have more to do with issue of a 40 hour guarantee and make-work contentions. As noted previously, although the Union might have raised these issues in the grievance process, they were not presented at the hearing. I find nothing in these cases that would be helpful in supporting the Employer's decision in this case, given the question in dispute.

In the case at bar, although the Employer provided a light duty assignment, they failed to demonstrate that they fully met their Article 13 obligations as described above. The grievant continued to perform work on June 11 and 12, as she had previously performed. Without discussion with her or investigation as to how she was accomplishing this work, the Employer made a decision that she could no longer case manual letters. The light duty assignment limited her to CIOSS waste mail and therefore limited her opportunities for work.

Postmaster Johnson and SDO Weber each testified that they met to discuss possible assignments for the grievant. Weber stated their objective was to find work within her restrictions. When asked about performing manual letter distribution, she stated she thought it "might not be a good possibility" due to reaching and standing restrictions. She also testified that Johnson was to further consider this assignment with MDO Staub. No testimony was presented that this additional conversation took place. She discounted hand cancel and riffling duties because they involved walking around and some lifting. All this despite the parties

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[16] W1C-5F-C-234 (George E. Bowles, Denver, CO, November 18, 1983)
[17] C1C-4B-C-25077 (George T. Roumell, Jr., Ann Arbor, MI, October 31, 1984)

stipulation during the hearing that the standing and walking restrictions were not new. Johnson, too, partially pointed to previous limitations such as standing and lifting in defending his decision not to assign her to manual letters or hand cancel. Weber also stated that when considering light duty assignments she had a general concern about putting employees in a position where they might accidentally exceed their restrictions, out of routine. In other words, if the Grievant was used to reaching above her shoulder in a manual case, she might be prone to continue doing so out of habit.

Under cross-examination, Weber testified that the standing restriction was new and that this new restriction precluded Grievant from working manual letters. She also testified that the walking restriction could possibly prevent a manual letter assignment because of the need to pick up mail. She further testified that the bending at waist restriction precluded manual letters because of the need to retrieve mail from a WUC, apparently unaware of the workaround employed by the Grievant.

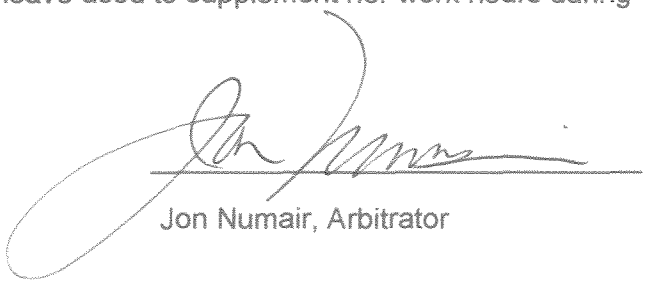
It was clear from Johnson's and Weber's testimony that they were not thoroughly familiar with Grievant's restrictions and/or work assignments before and after the June 11 changes. They intermixed the restrictions, citing pre-June 11 restrictions such as walking, lifting, and standing as the reason she couldn't continue to perform duties she regularly performed prior to June 11 and after July 10.

Given this it would be difficult to conclude that management dealt with their above noted obligations with the "greatest consideration" or "careful attention", or that they made "every effort" to reassign the grievant to work within her own craft and occupational group. As noted in cases cited above, these standards suggest a burden on the Employer to find the requesting employee work. When an assignment cannot be found, they must provide a written explanation as to why. The arbitrator will not suggest specific work assignments for the grievant in which the Employer could have met their obligation, as that is not the question before him. But suffice to say that, with minor accommodation, the Employer could have more fully considered other duties and therefore more favorably acted on the light duty request. The Grievant was able and adept at performing productive service within her limitations. Work was there for assignment. By limiting her assignment to CIOSS mail she was unable to work an eight hours shift, and by failing to provide full-time work under these circumstances, the Employer violated the Agreement.

CONCLUSION

For reasons discussed herein, the Employer violated the Collective Bargaining Agreement when the grievant was assigned to work less than eight hours per day or 40 hours per week while on

light duty for the period June 11 through July 10, 2012. She shall be made whole for all lost wages and benefits, including the restitution of leave used to supplement her work hours during this period.



Jon Numair, Arbitrator

October 19, 2012