

C#08895

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REGULAR ARBITRATION PANEL

APR 20 1989

In the Matter of the Arbitration

) GRIEVANT:

) BRANCH

JIM EDMON, NBA

National Association Letter Carriers

-Between-

) POST OFFICE:

) Pasco, Washington

UNITED STATES POSTAL SERVICE

) CASE NO: W4N-5R-C 32984

-And-

) NALC CASE NO: 484

NATIONAL ASSOCIATION OF
LETTER CARRIERS, AFL-CIO,

BEFORE:

CARL B. A. LANGE III, Arbitrator

APPEARANCES:

For the U.S. Postal Service:

THOMAS P. KING
Supervisor, Training
4001 South Pine Street
Tacoma, WA 98414-9404

For the Union:

JIM WILLIAMS
Regional Administrative Assistant
P. O. Box 84386
Vancouver, WA 98684-0386

Place of Hearing:

3500 West Court Street
Pasco, Washington

Date of Hearing:

January 31, 1989

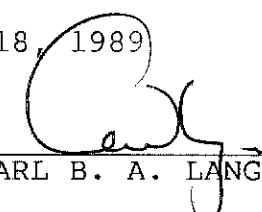
AWARD:

The Pasco Post Office violated the National Agreement and the Local Agreement by refusing to grant requests for Annual Leave even though the agreed upon quotas for choice and non-choice periods had not been filled. By way of remedy, the Pasco Post Office is ordered to cease and desist from denying any request for Annual Leave as long as the applicable quota has not been filled. Further, any carrier who was denied Annual Leave between May 1, 1986, and April 15, 1989, although slots were available within the quota, shall be credited with Administrative Leave Time in the amount of one hour for each hour that was denied.

(Background and Reasoning attached)

Date of Award:

April 18, 1989


CARL B. A. LANGE III

BACKGROUND AND REASONING
(Branch - Annual Leave Scheduling)

Pursuant to the National Collective Bargaining Agreement (Jt. Exhibit 1) between the UNITED STATES POSTAL SERVICE ("Service" or "Employer"), and the NATIONAL ASSOCIATION OF LETTER CARRIERS ("NALC" or "Union"), the undersigned was selected from the Western Region Regular Arbitration Panel to serve as the arbitrator in this matter.

This matter arises as the result of a 1986 change in operating policy at the Pasco Post Office regarding the granting of Annual Leave requests. The number of carriers eligible for Annual Leave during choice and non-choice periods had been set at 10 and 5 respectively. In 1986, the Postmaster determined that requests for Annual Leave could and would be denied based upon the needs of the Service, even when the quotas had not been filled. The instant grievance was filed at Step 2 on July 26, 1986, and was processed pursuant to the National Agreement.

An evidentiary hearing was held on January 31, 1989, at the Pasco Post Office, 3500 West Court Street, Pasco, Washington. The Service was represented by Tom King, Supervisor of Training. The NALC was represented by Jim Williams, Regional Administrative Assistant. At the hearing the parties agreed that there were no issues of procedural or substantive arbitrability to be resolved and that the matter was properly before the Arbitrator. Witnesses appearing before the arbitrator were duly sworn. No official transcript of the hearing was made.

The Union argued that the issue should be stated as:

"Did Management violate Articles 3, 10, and 30 of the National Agreement, Article 10 of the Local Memorandum, and the agreement struck on January 11, 1984, when in May 1986 the Post Master issued a policy which did not allow for the quotas during the Annual Leave selection as established by the parties in negotiations?

"If so, what is the appropriate remedy?"

"If not, did Management violate a binding past practice when they changed the policy in May 1986 concerning the quotas which had been allowed in prior leave years?

"If so, what is the remedy?"

The Service suggested that the issue should be:

"Did Management violate Articles 10.2, 10.3d4, and 10.4d of the National Agreement and Articles 10.5 and 10.10 of the Local Memorandum of Understanding by denying leave requested by carriers when that leave was requested after the choice/non-choice sign-up period had closed?

"If so, what is the proper remedy?"

Based upon a review of the evidence and testimony, the undersigned determines that the issue should be stated as:

"Did the Pasco Post Office violate the National Agreement or the Local Memorandum of Understanding by refusing to grant requests for Annual Leave that were made after the regular sign-up period, even though the agreed upon quotas had not been filled? If so, what is the appropriate remedy?"

During the course of the hearing, all parties were afforded a full and complete opportunity to be heard, to call, examine, and cross-examine witnesses, to develop arguments and to present relevant evidence. The Union made closing arguments on the record. A post-hearing brief was filed by the Service. The Union subsequently filed a responsive brief. The matter was deemed submitted for decision as of March 8, 1989.

The essence of the Union's argument is that the Postmaster changed the rules regarding Annual Leave - including rules that he or his designated representatives had worked out with the Union. The "Leave" article of the Local MOU, cited above, had been in effect, without change, since the early 1970's. In January 1984, the quotas were raised to 10 for the choice period and 5 for the non-choice period based on an agreement between Local 1528 and the Postmaster (Jt. Exhibit 4). At the same time, the parties agreed that the quotas could be exceeded if business conditions allowed.

Prior to 1986, requests for Annual Leave were granted, up to the stated quotas, whether the requests were made during or after the regular sign-up period. However, in early May 1986, just prior to the beginning of the choice period, the Postmaster determined and announced that even if the quota had not been met, all requests for Annual Leave would be considered based upon the needs of the Service. The Union argues that the first 10 choice period and the first 5 non-choice period Annual Leave slots should be allotted automatically, subject only to agreed-on limitations in the National Agreement and Local Mou.

As to the remedy, the Union requests that the undersigned reinstate the pre-1986 practice of granting all Annual Leave requests up to the applicable quota. Further, the Union asks

that each individual whose Annual Leave request was denied when slots were available under the quota be paid Administrative Leave time equal to the amount of requested Annual Leave.

The Service argues that there was no violation of either the National Agreement or the Local MOU. Citing its obligation to provide efficient and regular mail delivery, the Service argues that advance planning for staffing purposes is a necessity (see Opening Argument). More specifically, in its Post-Hearing Brief, the Service first argues that the negotiated April 1 deadline is the major determinate of whether or not the quota would be completely filled in any given week. Second, the Service argues that requests for "incidental leave" are not automatically approved. Third, the Service has a past practice of disapproving Annual Leave requests when the quotas were met. Fourth, the January 1984 Labor Management meeting set "objectives or targets," not absolute numbers. Fifth, approval for Annual Leave requests made outside of the regular sign-up period is discretionary, not mandatory. Finally, the Service objects to the Union's proposed remedy on the basis that it had not been requested earlier in the grievance procedure.

Relevant Provisions of the Collective Bargaining Agreement

The Agreement between the United States Postal Service and the American Postal Workers Union, AFL-CIO, and the National Association of Letter Carriers, AFL-CIO ("National Agreement"), entered into the record as Jt. Exhibit 1, provides:

"ARTICLE 3

"MANAGEMENT RIGHTS

"The Employer shall have the exclusive right, subject to the provisions of this Agreement and consistent with applicable laws and regulations:

"A. To direct employees of the Employer in the performance of official duties;

"B. To hire, promote, transfer, assign, and retain employees in positions within the Postal Service and to suspend, demote, discharge, or take other disciplinary action against such employees;

"C. To maintain the efficiency of the operations entrusted to it;

"D. To determine the methods, means, and personnel by which such operations are to be conducted;

"E. To prescribe a uniform dress to be worn by letter carriers and other designated employees; and

"F. To take whatever actions may be necessary to carry out its mission in emergency situations, i.e., an unforeseen circumstance or a combination of circumstances which calls for immediate action in a situation which is not expected to be of a recurring nature.

...

"ARTICLE 10

LEAVE

"Section 1. Funding

"The Employer shall continue funding the leave program so as to continue the current leave earning level for the duration of this Agreement.

"Section 2. Leave Regulations

"The leave regulations in Subchapter 510 of the Employee and Labor Relations Manual, insofar as such regulations establish wages, hours and working conditions of employees covered by this Agreement, shall remain in effect for the life of this Agreement.

"[See Memo, page 183]

"Section 3. Choice of Vacation Period

"A. It is agreed to establish a nationwide program for vacation planning for employees in the regular work force with emphasis upon the choice vacation period(s) or variations thereof.

"B. Care shall be exercised to assure that no employee is required to forfeit any part of such employee's annual leave.

"C. The parties agree that the duration of the choice vacation period(s) in all postal installations shall be determined pursuant to local implementation procedures.

"D. Annual leave shall be granted as follows:

"1. Employees who earn 13 days annual leave per year shall be granted up to ten (10) days of continuous annual leave during the choice period. The number of days of annual leave, not to exceed ten (10), shall be at the option of the employee.

"2. Employees who earn 20 or 26 days annual leave per year shall be granted up to fifteen (15) days of continuous annual leave during the choice period. The number of days of annual leave, not to exceed fifteen (15) shall be at the option of the employee.

"3. The subject of whether an employee may at the employee's option request two (2) selections during the choice period(s), in units of either 5 or 10 working days, the total not to exceed the ten (10) or fifteen (15) days above, may be determined pursuant to local implementation procedures.

"4. The remainder of the employee's annual leave may be granted at other times during the year, as requested by the employee.

"E. The vacation period shall start on the first day of the employee's basic work week. Exceptions may be granted by agreement among the employee, the Union representative and the Employer.

"F. An employee who is called in for jury duty during the employee's scheduled choice vacation period or who attends a National, State, or Regional Convention (Assembly) during the choice vacation period is eligible for another available period provided this does not deprive any other employee of first choice for scheduled vacation.

"Section 4. Vacation Planning

"The following general rules shall be observed in implementing the vacation planning program:

"A. The Employer shall, no later than November 1, publicize on bulletin boards and by other appropriate means the beginning date of the new leave year, which shall begin with

the first day of the first full pay period of the calendar year.

"B. The installation head shall meet with the representatives of the Unions to review local service needs as soon after January 1 as practical. The installation head shall then:

"1. Determine the amount of annual leave accrued to each employee's credit including that for the current year and the amount he/she expects to take in the current year.

"2. Determine a final date for submission of applications for vacation period(s) of the employee's choice during the choice vacation period(s).

"3. Provide official notice to each employee of the vacation schedule approved for each employee.

"C. A procedure in each office for submission of applications for annual leave for periods other than the choice period may be established pursuant to the implementation procedure above.

"D. All advance commitments for granting annual leave must be honored except in serious emergency situations.

"Section 5. Sick Leave

"The Employer agrees to continue the administration of the present sick leave program, which shall include the following specific items:

"A. Credit employees with sick leave as earned.

"B. Charge to annual leave or leave without pay (at employee's option) approved absence for which employee has insufficient sick leave.

"C. Employee becoming ill while on annual leave may have leave charged to sick leave upon request.

"D. Unit Charges for Sick Leave shall be in minimum units of less than one (1) hour.

"E. For periods of absence of three (3) days or less, a supervisor may accept an employee's certification as reason for an absence.

...

"ARTICLE 15

"GRIEVANCE-ARBITRATION PROCEDURE

"Section 1. Definition

"A grievance is defined as a dispute, difference, disagreement or complaint between the parties related to wages, hours, and conditions of employment. A grievance shall include, but is not limited to, the complaint of an employee or of the Unions which involves the interpretation, application of, or compliance with the provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement.

...

"Section 4. Arbitration

"A. General Provisions

...

"(6) All decisions of an arbitrator will be final and binding. All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator. ...

...

"ARTICLE 30

"LOCAL IMPLEMENTATION

"A. Presently effective local memoranda of understanding not inconsistent or in conflict with the 1984 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.

"B. There shall be a 30-day period of local implementation to commence April 1, 1985 on the 22 specific items enumerated below, provided that no local memorandum of understanding may be inconsistent with or vary the terms of the 1984 National Agreement.

...

"4. Formulation of local leave program.

"5. The duration of the choice vacation period(s).

"6. The determination of the beginning day of an employee's vacation period.

"7. Whether employees at their option may request two selections during the choice vacation period, in units of either 5 or 10 days.

...

"9. Determination of the maximum number of employees who shall receive leave each week during the choice vacation period.

"10. The issuance of official notices to each employee of the vacation schedule approved for such employee.

"11. Determination of the date and means of notifying employees of the beginning of the new leave year.

"12. The procedures for submission of applications for annual leave during other than the choice vacation period.

...

"20. The determination as to whether annual leave to attend Union activities requested prior to determination of the choice vacation schedule is to be part of the total choice vacation plan.

...

"C. All proposals remaining in dispute may be submitted to final and binding arbitration, with the written authorization of the national Union President. The request for arbitration must be submitted within 10 days of the end of the local implementation period. However, where there is no agreement and the matter is not referred to arbitration, the provisions of the former local memorandum of understanding shall apply, unless inconsistent with or in conflict with the 1984 National Agreement.

"[see Memo, page 194]

"D. An alleged violation of the terms of a memorandum of understanding shall be subject to the grievance-arbitration procedure.

Relevant Provisions of the Local Memorandum of Understanding.

The Local Memorandum of Understanding ("Local MOU") between Tri-Cities Branch 1528 and the United States Postal Service Pasco, Washington (Jt. Exhibit 3) provides at Article X:

"ARTICLE X - LEAVE

"Section 1 - Administration of the leave planning shall be done by management in accordance with the negotiated sections of Article 10 of the local memo; such includes posting on leave chart during choice period.

"Section 2 - Annual leave shall be chosen and posted in choice period by seniority.

"Section 3 - Annual leave will begin on Monday and conclude on Sunday.

"Section 4 - A letter carrier may combine his long weekend with his annual leave.

"Section 5 - Annual leave will be granted in increments of hours and days. (This item is in contention and has been certified to arbitration by the Union. Accordingly, it will remain effective until an arbitration decision is rendered.)

"Section 6 - Any carrier eligible for annual leave during the choice period must submit his first choice no later than April 1st of that leave year.

"Section 7 - Carriers will submit leave applications during choice period in triplicate. The Union representative and Carrier Foreman will initial all three forms and submit the original to the Carrier Foreman, retain the duplicate, and return the triplicate to the carrier.

"Section 8 - Any carrier that [sic] is eligible for thirteen (13) days annual leave is entitled to ten (10) days of continuous leave during choice period.

"Section 9 - Any carrier that [sic] is eligible for twenty (20) or more days annual leave per year is entitled to fifteen (15) days of continuous leave time during choice period. In the event the carrier chooses only ten (10) days he may have a second choice of five (5) days.

"Section 10 - Carriers shall be allowed to sign for the remainder of their annual leave at any other times of the year on a first come, first served basis except the carrier whose scheduled days off falls on a holiday will have preference to that day off over and above any annual leave of less than one week except emergency leave. If any dispute on who gets the day off, it shall be determined by seniority on a rotating basis.

"Section 11 - The number of carriers granted annual leave during the choice period shall be determined by the maximum number of weeks necessary to grant each carrier leave he is eligible for during choice period, [sic] (but not to be less than the previous year.)

"Section 12 - Choice vacation period shall be for twenty-three (23) weeks beginning on the 20th of May 1982 and extending through the 27th of October 1982. Choice leave period for 1983 shall begin on May 19th and conclude on October 26th.

"Section 13 - Variations may be made in the agreement, when possible, to allow a carrier extra time off in choice period for an extended trip when this does not deprive any other carrier of his first choice during choice leave period.

"Section 14 - Any carrier who signs for annual leave during choice period, and does not want same, shall give one week notice to the supervisor and Union who will then post the leave period, to be bid by seniority. Any carrier who would have more than his allotted time in the choice period, shall not be permitted to bid, unless no other bids are received. Limited trading within the choice period will be allowed.

"Section 15 - In the event the carrier neglects to notify the supervisor and Union Steward of his intention to give up his leave during the choice period, the carrier shall sign the leave list last the following year. In case a carrier's leave during the choice period must be given up because of last moment illness, this provision will not prevail.

"Section 16 - The week of the carrier's State Convention shall be served for convention delegates. Convention week is not a part of choice period. If State Convention date is scheduled during choice period, the choice period shall be reduced one week. The number of carriers allowed off shall be the same as allowed off during choice period.

"Section 17 - Jury duty will not be considered as a choice selection during choice period.

"Section 18 - Military leave taken during choice period will not be considered one of carrier's choice selection.

"Section 19 - Applications for leave other than the choice period shall be made in duplicate. Said leave shall be approved or disapproved within seven (7) days after filing of the leave application and the duplicate copy returned to the carrier showing action taken and bearing signature of carrier foreman.

"Section 20 - Request by carriers for emergency leave may be granted by the Carrier Foreman. If not granted, must be acted upon by the installation head if on duty or at his earliest opportunity."

In contract interpretation cases, the first matter to be determined is whether the language of the pertinent document is clear and unambiguous or unclear and/or ambiguous. If the language is clear and unambiguous, it will be applied to the dispute without further analysis. The language would be considered unclear and/or ambiguous if the interpretations urged by both parties were equally capable of being read into the provision in question. In such an instance, either argument could be supported in the context of the complete agreement on the issue. If the language could reasonably support more than one interpretation, then other factors, including bargaining history and past application of the provisions in question, would have to be reviewed in order to ascertain the appropriate and intended meaning of the particular provisions.

In the view of the undersigned, an analysis of the genesis and application of Articles 10 and 30 of the National Agreement is unnecessary. For a detailed analysis, see National Arbitration case nos. HLC-NA-C 59 and HLC-NA-C 61 (1986) decided by Arbitrator Richard Mittenthal. Nonetheless, certain passages in the Mittenthal decision bear repeating in that they relate directly to the instant matter. In a discussion of the Annual Leave process at pages 6 and 7, Arbitrator Mittenthal states:

"At the local level, the parties are expected to define the 'choice vacation period' and determine the 'maximum number of employees who shall receive leave each week during the choice vacation period.' Employees then bid for the leave weeks they want during this choice period. If the bids for a given week are greater than the maximum number of employees permitted to be off, some requests must be denied. . . .

"These arrangements, however, do not dispose of all of the annual leave earned. . . .

"This subject has been addressed in thousands of LMU. One type of clause provides for the selection of leave time during non-choice vacation periods. . . . Employees ordinarily bid for non-choice periods in the same way they bid for choice periods.

"Another type of clause provides for the selection of incidental leave. Such a clause recognizes that people may experience, for personal reasons, an unanticipated need for leave time. . . . A LMU allows employees to obtain such leave during the year even though the bidding period has passed. There are typically two conditions to any such incidental leave: (1) the employee must give

supervision sufficient notice of his request and (2) the granting of the request must not result in exceeding the ceiling the LMU places on the number of employees allowed to be off in a given week." (Emphasis in original.)

Further, at pages 12 and 13, Arbitrator Mittenthal writes:

"Hence, when Article 30 B 4 made 'formulation of local leave program' a subject for local implementation, these words must have been intended to have a broad reach. Local parties were authorized to deal with leave at any time during the year, within or outside the choice period. Local parties were authorized to deal with 'variations' as well. Their 'formulation' can make it mandatory on Management to grant leave at a certain time during the choice period. . . . That being so, it is difficult to believe their 'formulation' could not likewise make it mandatory on Management to grant leave at a certain time during the non-choice period. [footnote: Any such mandatory arrangement in a LMU would of course be subject to Article 10, Section 4D . . .] That should be especially true where the LMU clause permits a lesser percentage of employees to be off during the non-choice period.

"Moreover, one cannot ignore the fact that thousands of LMU clauses have been negotiated over the years. They have routinely required Management to grant leave during non-choice periods (or incidental leave) under certain conditions. . . .

. . . .

"It may be that a particular LMU clause will, due to the poor judgment of the negotiators, permit too many employees to be on leave at one time or permit employees to take leave on too short a notice. It may be that these arrangements will cause inefficiencies. . . . It cannot be said, on the present state of the record, that all (or most) LMU clauses on leave during non-choice periods (or incidental leave) must necessarily cause inefficiency. . . ." (Emphasis in original.)

The Service's refusal to grant Annual Leave requests either inside or outside of the choice vacation period when the

respective quotas have not been filled violates the National Agreement as interpreted by Arbitrator Mittenthal above. Further, to the extent that unfilled quota slots are not filled on request, Section 11 of Article X of the Local MOU is also violated in that the number of carriers granted Annual Leave in 1986 (and subsequent years) has been reduced. Additionally, the effect of the denials renders Sections X and XIV of the Local MOU essentially useless.

Finally, the record of the January 11, 1984, "NALC LABOR MANAGEMENT MEETING" states in pertinent part:

"AGENDA ITEMS:

"1. Vacations were discussed.

. . .

"b. For 1984, ten will be allowed off during prime time, and five will be allowed off outside of prime time. Management will consider applications in excess of the quotas on an individual basis when business conditions are favorable.

. . ."

The terms "prime time" and "outside of prime time" mean the same as choice and non-choice in the context of designating vacation periods. The numbers set forth in item 1.b. above constituted an increase over the prior years' quotas. Following this Labor Management meeting, the 1984 vacation schedules were posted and filled based upon the Local MOU process. The same process was utilized in 1985. In practice, of the nearly 60 denials of Annual Leave requests over the 2-year period, not one request was denied where there was an open slot within the quota and, not one request was denied on the basis of "the needs of the Service." In fact, 80 percent of the denials were based on the quotas being at the maximum (Union Exhibits 2 and 3). For 1983, the number of quota-based denials was nearly 90 percent (Union Exhibit 1). Thus, in 1984 and 1985, the phrase "will be allowed off" did not mean "may be allowed off" or "might be allowed off," as it was interpreted by the Service to mean "will be allowed off" or "shall be allowed off." The refusal to automatically grant Annual Leave requests up to the 1984 quota numbers and the expansion of the policy on the reasons for the denial of Annual Leave requests clearly violated the 1984 Labor Management accord made with Branch 1528.

The undersigned considered several possible remedies for the violations set forth above. Throughout the grievance procedure, the Union requested only reinstatement of the full complement of 10 off during the choice period and 5 off during the non-choice period. In certain circumstances, the undersigned has required a

restoration to the status quo ante without additional compensation or other make-whole remedy. That restoration is appropriate in this matter and is so ordered.

In this matter, however, the undersigned has determined to augment the remedy with an award of Administrative Leave time to each affected employee. First, it is necessary to answer the Service's objection to this remedy, requested by the Union at the arbitration hearing. Arbitrator Irvin Sobel addressed the issue in Regional Case No. S4N-3R-D 35445 (1987) where he stated:

"Given the right of the arbitrator in circumstances when a grievance is sustained, to fashion a remedy appropriate to making the grievant "whole" this arbitrator cannot acquiesce to the able Employer advocate's contention, that he is bounded by and limited to the Union's requested "Corrective Action." The arbitrator does not have to take the less than precise verbiage of a frequently inexperienced and sometimes technically unschooled Union Steward as gospel, either when that officer requests, far more than the grievant (or Union) is entitled to, or as in this comparatively rare instance, too little. In fact, arbitrators revise or modify (Union) requests far more often in a downward rather than an upward direction. . . . Thus, the Employer's attempt to limit the remedy on grounds of the arbitrator's restricted authority, is hereby rejected."

Arbitrator Sobel's reasoning and conclusions are appropriate for application in the instant matter.

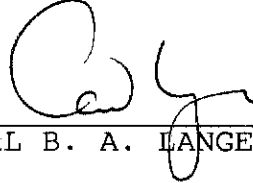
In Regional Case No. W4N-5R-C 38982, Arbitrator William E. Rentfro decided a strikingly similar issue in a case involving the Kent, Washington, Post Office. In that matter, one employee was improperly denied Annual Leave for two days. Arbitrator Rentfro stated:

"It is the conclusion of the Arbitrator that Management ignored valid and clear-cut requirements of the Local Agreement when it arbitrarily denied Grievant annual leave. . . . It is undisputed that Grievant's request was timely and properly submitted and well within the identified . . . quota . . . Grievant is entitled to 16 hours of administrative leave, independent of his annual leave balance and contractual quotas, to be taken at his convenience. It is hoped that the remedy herein ordered will point up the flagrant nature of the violation

involved and encourage Management to adhere to contractual obligations in the future."

Since the instant matter involved the entire carrier complement at Pasco and not just one person, the contract violations warrant a remedy at least equal to that assessed against the Kent Post Office. Thus, each carrier who was improperly denied Annual Leave, as set forth above, shall be credited with Administrative Leave time equal to the amount of Annual Leave that was originally requested.

Respectfully submitted,



CARL B. A. LANGE III