C-19717

IN THE MATTER OF ARBITRATION BETWEEN) OPINION AND AWARD

American Postal Workers Union, AFL-CIO

-and-

U.S. Postal Service
Washington, D.C.

) Case No. J90C-1J-C 92056413

) Traverse City, Michigan

BEFORE: Bernard Dobranski, Arbitrator

APPEARANCES: For the US Postal Service
John W. Dockins, Esq.
William Daigenault, Esq.

For the APWU
CJ "Cliff" Guffey
Clyde Hartshorn

PLACE OF HEARING: Washington, DC

DATE OF HEARING: May 20, 1997

BRIEFS SUBMITTED: August September 22, 1997

RECORD REOPENED: October 19, 1998
December 22, 1998

ADDITIONAL AWARDS SUBMITTED: October 28, 1998
December 29, 1998

SUMMARY OF AWARD: For all the reasons set forth in the attached Opinion and Award, the grievance is denied.

Bernard Dobranski
Arbitrator

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	)

The hearing in the above matter was held on May 20, 1997 in Washington, D. C. before Bernard Dobranski, designated as arbitrator in accordance with the procedures set forth in the collective bargaining agreement.

Appearances: John W. Dockins, Esq.
William Daigneault, Esq.
For the Postal Service

CJ "Cliff" Guffey
Clyde Hartshorn
For the American Postal Workers Union (APWU)

Full opportunity to present evidence and argument was afforded the parties. Post-hearing briefs were filed by the APWU on September 3, 1997 and by the U.S. Postal Service on September 22, 1997. In August 1998, the APWU requested that the record be reopened to afford it the opportunity to submit into evidence a national level arbitration award issued by Arbitrator Carlton Snow on April 18, 1998. On September 10, 1998, the Postal Service filed an objection to reopening the hearing for this purpose. On September 16, 1998, the APWU requested an opportunity to respond the Postal Service objection. On October 19, 1998, the arbitrator granted the APWU request to reopen the record for the reception of Arbitrator Snow's award and gave the Postal Service ten days to respond on the merits of the award. No response was received. On October 28, 1998, the APWU submitted the Snow award for the record. On November 30, 1998, the APWU requested the arbitrator to reopen the record again for another national level arbitration award rendered by Arbitrator Snow, this one issued on November 4, 1998. In light of his earlier ruling, the arbitrator granted the request, and on December 29, 1998, the APWU submitted the second Snow award for the record. Although the opportunity was provided to the Postal Service to respond by January 5, 1999, no response was received.

ISSUE

The issue is whether the Postal Service violates the National Agreement by assigning rural letter carriers to temporary limited duty work in the clerk craft when no work is available within their medical restrictions within their own craft.

BACKGROUND FACTS

Gwendolyn Durga is a rural letter carrier in Traverse City, Michigan who sustained a work-related injury on December 19, 1991. On January 3, 1992, the Post Office assigned Ms. Durga limited duty work within her medical restrictions in the General Office. On January 11, 1992, based on updated medical information, Ms. Durga was assigned limited duty work as a distribution clerk at the Mail Processing Annex in the Traverse City office. With the assignment of this work in the clerk craft to Ms. Durga, a Rural Carrier, which lead to the filing of the instant grievance by the APWU. The grievance was denied at various stages of the grievance procedure, and is now properly before the national arbitrator for final and binding resolution.

The APWU presented its case primarily through Union Exhibits 1-23 and the arguments derived from them. The Postal Service presented its case primarily through Postal Service Exhibits 1-10, the arguments derived from them, and the testimony of Postal Service witnesses Root, Magilligan, Walker, Shields, Shane, Prais, and Bauer.

Root, a rural letter carrier, from Atkinson, New Hampshire and Director of Labor Relations for the National Rural Letter Carriers Association, testified that he has been involved with the union as a steward or an officer for the past 22 years and thus is aware of the assignments management has provided to rural carriers injured on duty. Although rural carriers injured on duty are sometimes assigned limited duty performing rural carrier duties, most of the time they are given limited duty assignments in the clerk craft. This is so because it is much more likely that clerk craft duties and not rural carrier duties fall within the medical restrictions of the injured on duty rural carriers. In his experience, management has assigned injured-on-duty rural carriers clerical duties as limited duty on "thousands" of occasions. This covers the

period from mid to late 1970's until the time of the hearings. In most of these cases, no grievance was filed or issue raised.

On cross examination, Root acknowledged that if a clerk injured on duty was given rural letter carrier duties, this would be a violation of the Rural Carrier's Agreement. In his opinion, the "every effort" clause in section 546 of the Employee and Labor Relations Manual (ELM) would not allow the Postal Service to disregard the Rural Carriers contractual provisions and permit a new assignment of an injured clerk employee to the rural letter carrier craft.

Root further testified that if an employee could distribute for a certain number of hours, it was his understanding of the ELM's provisions that attempts should be made to place that employee in a limited duty capacity in his or her craft. Root also stated that the APWU could not negotiate provisions inside the APWU agreement that would affect the National Rural Letter Carriers Association (NRLCA), at least not without the NRLCA's involvement. Under the NRLCA agreement, there is "light duty", but apparently not on full-time assignments or on regular routes. Moreover, a regular rural carrier who has an on-the-job injury could be assigned in a limited duty capacity to his or her regular route, and perform part of that duty. If the remainder of the duty was performed by a Rural Carrier Associate (RCA), the RCA would be paid for the remainder of the actual work performed. In Root's opinion, there would be no harm if a rural carrier worked part of his or her own route for the Postal Service.

Root agreed that in 1971, the NRLCA was part of the joint bargaining group with the APWU and the NALC. It was under the same contract with some separate sections. It was in 1978 when the NRLCA did not negotiate with the APWU.

On redirect examination, Root testified that insofar as general duties are concerned, there is nothing in the rural carrier craft that could be performed by a clerk. According to Root, there

is a difference between a modified distribution case for clerks to distribute mail, and a distribution case for rural carriers to distribute mail. Rural carrier cases are approximately the same size and height.

Magilligan, the Postmaster at the Brookesville, Florida Post Office, a twenty-nine year Postal Service employee, and formerly a member and president of the APWU Brookesville Local, testified that since 1989 he has been aware of several situations where rural carriers injured on-the-job worked in the clerk craft. In 1995, a grievance was filed because the rural carrier who was provided with the clerk craft duties was an RCA — a non-career employee. The APWU did not believe that the Postal Service should be providing work to non-career employees. A RCA is an employee hired to supplement the rural carrier workforce, taking over for a regular carrier on his or her day off or on annual or sick leave days. Before that grievance, there may have been a few grievances from the APWU saying that a career rural carrier could not work in the clerk craft, but these were probably resolved at Step two. In these grievances, the union did not argue that there was an absolute prohibition from using career rural carriers in the clerk craft, but only expressed concern about how the assignment was going to affect their hours of work. The post office in Brookesville continues to use rural carriers in the clerk craft when necessary. At the time of the hearing, there were two regular rural carriers in the Brookesville office working in the clerk craft as a result of on-the-job injuries and, to Mcgilligan's knowledge, no grievances had been filed.

On cross examination, Mcgilligan acknowledged that he had never been involved in national negotiations.

Walker, the Manager of Post Office operations for the North Florida District and a nineteen-year Postal Service employee, testified that he has been aware since 1987 of rural

carriers on limited duty working in the clerk craft. Within his area of supervision, which includes about 80 offices and over 400 rural routes, it happens on the average of four or five times a year. It was only six months before the hearing that he first learned of an objection to this practice by the APWU.

On cross examination, he indicated that his area of management was on the west side of North Florida up to Tallahassee and did not include Largo, Florida.

Shields, a labor relations specialist in Tennessee, a Postal Service employee since 1969, and formerly a member, steward, and assistant director of the clerk craft in the Knoxville Local of the APWU, testified that first he became aware in late 1979 or early 1980 of the postal practice of putting rural carriers on limited duty into the clerk craft. Although he was aware of this crossing of craft when he was a Union officer, he never filed a grievance against the practice. He never filed a grievance because he thought it was legal under the Agreement. The first time he learned that the APWU had an objection against the practice of putting rural carriers in the clerk craft was a week before the hearing.

On cross examination, he stated that Lebanon, Tennessee was not part of his area of responsibility.

Shane, who administers the injury compensation program for the Mid-Atlantic area and who had worked for the Postal Service for 31 years at the time of the hearing, testified that he has been aware since 1978 of the practice of rural carriers on limited duty working in clerk craft duties. It is only recently, perhaps in 1995, that he became aware of an APWU challenge to this practice. It was common practice to make such assignments and he was aware of it being done " hundreds of times." He was aware from conversations with other injury compensation program

administrators that they were also assigning rural carriers limited duties in the clerk craft and in other crafts.

On cross examination, he acknowledged that he testified before Arbitrator Snow on August 10, 1993 regarding the past practice issue. In that case, he testified that if an employee was full-time when he was injured and it was necessary to reassign him permanently to another craft, the employee would be assigned as a full-time employee. If the employee was a PTF, he would be reassigned as a PTF. He had no personal knowledge of headquarters transactions between the APWU and the Postal Service.

On redirect examination, he testified that his testimony in the earlier case was consistent with Postal Exhibit 7, a February 15, 1985 Step 4 grievance settlement indicating that the issue of assigning rural carriers to limited duties in the clerk craft is one suitable for regional determination, and the provisions in Part 546 of the ELM should be applied to the facts at the regional level. This language is consistent with the past practice testimony he offered in the arbitration proceeding.

On re-cross examination, he agreed that the language in the Step 4 settlement did not necessarily mean that the APWU agreed that rural letter carriers can work in the clerk craft.

Prais, who is the senior injury compensation specialist in the Milwaukee, Wisconsin district and employed by the Postal Service for over 34 years, testified that he worked as an RICPA in the Central region from 1978 through 1986. In that capacity, he was responsible for the injury compensation program for the 13-state mid-west area. He first became aware of the practice of placing rural carriers on limited duty into the clerk craft in 1976 or 1977. The placement of rural carriers on limited duty into the clerk craft was a routine practice and he had been involved in "hundreds" of these situations. When he was an RICPA in the Central region,

he knew that the other four regions of the country followed the same practice regarding the placement of rural carriers into the clerk craft. He first became aware of the APWU objection to this practice approximately six months before the instant case when he saw an APWU letter which, in essence, said rural carriers are not to be placed into limited duty assignments within the clerk craft.

On cross examination, Prais repeated that the document was an APWU document, not a Postal Service one.[1] Prais has not seen anything since the 1985 grievance settlement which suggests that the APWU position in that settlement has changed. He also stated that Section 546 of the ELM "speaks to all employees".

On re-direct examination, Prais stated again he first became aware of the APWU objection to rural carriers working in the clerk craft approximately six months before the instant hearing. He is also recalled a management document that said that any grievances on the issue of rural letter carriers should be sent to the Labor Relations Department at postal headquarters. As regards Section 546 of the ELM, Prais indicated that a national award by Arbitrator Mittenthal in 1983 indicated that the procedures to be followed were not Article 13 procedures but were Section 546 ones. This gave the Postal Service the right to assign employees under Section 546 of the ELM. This was also consistent with the past practice of his office.

Bauer, who was employed in Safety and Risk Management of the Human Resources Department at the USPS headquarters and who has worked in the Postal Service since 1973, testified to a practice of placing rural carriers on limited duties in the clerk craft. He first became aware of this practice in 1977 or 1978. As regards to Postal Service Exhibit 3, a Step 4 level

[1] On May 23, 1997, the Postal Service supplied to the arbitrator and to the APWU representative a copy of the document referred to by Prais in his testimony. The document in question was a one page sheet put out by the APWU office in Bloomington, Minnesota which, among other things indicated that rural letter carriers are not

grievance filed by the NALC on April 19, 1979 which eventually led to a national settlement on how to apply the external law to employees injured-on-duty and qualified for limited duty assignments, Bauer testified he received documents in that the grievance settlement process. He was aware of the discussions the president of NALC was having with the APWU to get its concurrence to the language of that settlement. Bauer identified Postal Exhibit 10 as a July 26, 1979 letter signed by James Gildea, the former Postmaster General for the Labor Relations Department, concerning limited duty work involving rural carriers on limited duty doing clerk work. In relevant part, the letter indicates that such limited duty assignments are not made pursuant to Article 13 of the Agreement but, pursuant to Postal Service obligations under FECA. Limited duty assignments, according to Bauer, are made in accordance with Section 546 of them ELM. Article 13 is a contractual provision under which an employee normally requests a light duty assignment. Bauer was not aware of any response to the July 26, 1979 Gildea letter. He also identified Postal Service Exhibit 11 as a June 12, 1979 letter from Stephens, of the APWU, to Bauer, indicating concerns over limited duty assignments. In his July 2, 1979 response, Bauer referred the matter to Labor Relations for appropriate action. Bauer also indicated these letters were exchanged near the same time as the NALC grievance set forth in Postal Service Exhibit 3, a grievance which led to the settlement resulting in the language of Part 546.

Bauer also explained that there was a major change to FECA regulations in the mid-1970's which permitted employees to continuation of pay (COP) immediately. This led to a dramatic increase in the number of employee claims under FECA. In response, the Postal Service established internal procedures to get better control over these claims.

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permitted to perform light or limited duty work in the clerk craft. The Postal Service date stamp on the document was September 6, 1996.

Bauer also testified that since Section 546 was inserted as part of the ELM, it has been applied Postal Service-wide to all employees, including rural carriers on limited duty. Although he could not give a precise number of times rural carriers have worked on limited duty in the clerk craft, it was "extensive". During FY 96, for example, there were approximately 160,000 work hours of limited duty for the rural carrier craft and approximately 2.5 billion dollars in salary. Probably 75 to 80 percent of those hours, if not more, would be outside the rural carrier craft.

Bauer first became aware of the APWU objection to this practice in late 1995 in an Ohio regional arbitration award. He identified the Ohio case as the regional arbitration award that formed the basis of Union Exhibit 22, an award rendered by Arbitrator Dean on June 28, 1994. Although the case was issued in 1994, he did not become aware of it until sometime in 1995.

As a headquarters analyst, he was aware that the regional practice was that a rural carrier would be assigned duties in other crafts if he or she could not be accommodated in the rural carrier craft.

On cross examination, he indicated that he was not aware of a regional arbitration award issued by Arbitrator Nathan on December 7, 1993. Because he did not always know what was done on the regional level, he could not testify with 100 percent certainty that the Postal Service cross-craft policy was upheld nationwide. He also was not aware of any specific occasion when the APWU stated at the national level that "it's fine for rural letter carriers to work in the clerk craft."

On redirect examination, Bauer stated that he was "100 percent certain that the Postal Service had worked rural carriers in the clerk craft in some locations." To the best of his recollection, this goes back into the late 1970's when he first came into his job.

On re-cross examination, Bauer acknowledged that rural letter carriers get paid at a different rate of pay than APWU members. If a job offer is made to an employee, the job offer is created based on the employee's medical limitations. The pay is set so the employee does not have any gain or loss to his or her salary. Bauer also acknowledged that he would deal directly with an individual employee in establishing a pay rate in these circumstances.

It is upon the testimony of the individuals described above, the exhibits of the parties, and the arguments presented at the hearing and in the briefs that the case comes before the arbitrator for final and binding resolution.

POSITIONS OF THE PARTIES

APWU Position:

The APWU asserts that rural carriers have no access to the bargaining unit work of the clerk craft because rural carriers have no access within the APWU collective bargaining agreement. Assignments in the clerk craft are reserved for employees in the clerk craft through the National Agreement. The National Agreement does provide limited access to assignments in the clerk craft to other crafts through Articles 7, 12, and 13. Rural carriers, however, do not have access through these articles.

According to the APWU, there are currently four bargaining units within Postal Service mail processing and customer services. These units include the NALC, which represents one craft as a separate bargaining unit; the Mail Handlers Union, which is also a craft and a separate bargaining unit; the APWU, which is a separate bargaining unit with four crafts within it; and the Rural Letter Carriers, which is a craft and also a separate bargaining unit.

The bargaining units of the APWU, NALC, and the Mail Handlers Union are tied together for cross-craft assignments, for light duty purposes, and for excessing purposes. The Rural Letter Carriers are not. This was achieved through a Memorandum of Understanding entered into by the US Postal Service and the Joint Bargaining Committee (NALC and APWU) for the 1990 National Agreement. In that Memorandum, the parties indicated that cross craft assignments of employees, on both a temporary and permanent basis, "shall continue as they were made among the six crafts under the 1978 National Agreement." The six crafts under the 1978 National Agreement were the four crafts of the APWU, the NALC, and the Mail Handlers. If the Postal Service wished to provide rural letter carriers temporary cross craft assignments to perform APWU bargaining work, it could have negotiated a similar provision to have included the Rural Letter Carriers.

The APWU further argues that Article 37, Section 1. B. defines duty assignments and Article 37, Sections 3.A.1(a) and (b) require these regularly scheduled duties, full-time or part time, to be posted to the clerk craft. Moreover, Article 30, Section B (15) and (17) permits the Postal Service to negotiate specific assignments to be held for light duty purposes. As Union Exhibits 14 and 15 make clear, Article 30 assignments apply to employees injured on-the-job as well as off the job. Greater consideration is required for an employee injured on-the-job, covered by the APWU contract, than for an employee ill or injured off-the-job.

The APWU also asserts that the Postal Service argument that the language of Section 546 of the ELM provides the Postal Service with license to allow rural carriers to perform clerk duties is misguided. Section 546, as it is tied into the APWU contract through Article 19, only applies to employees covered by that contract, which are the four crafts, plus the NALC and the Mail Handlers Union. Rural Letter Carriers, if they have an article similar to Article 19 in their

agreement, can only go so far as it applies to employees within their bargaining unit. Section 546 provides that re-employment must be in compliance with the applicable collective bargaining agreements. Although Section 546.141 (a)(2) indicates that "other work may be assigned", this is not an obligation as claimed by management. This language must be tempered by the entire contract. As Section 546.21 of the ELM makes clear, reemployment, including the return to work of former and current employees, must be in compliance with the applicable collective bargaining agreements. Similarly, Sections 341.1 and 342.4 of the Personnel Operations Handbook (Union Exhibit 16) make it clear that temporary assignments must be in accordance with or guided by the applicable collective bargaining agreements.

In addition, the Postal Service argument that the APWU waived its right to challenge rural carriers working in the clerk craft by the process through which Section 546.141 was developed and placed into the ELM, must fail. It fails for two reasons: first, as noted above, the specific language of Section 546 of the ELM and Section 340 of the Personnel Operations Handbook requires compliance with the contract. Second, Article 19 of the National Agreement also indicates that the handbooks, manuals, and published regulations, as they apply to employees covered by this agreement, shall contain nothing that conflicts with the Agreement. In other words, the Postal Service and the APWU have agreed, through the language in Article 19, that handbook language is incorporated into the contract as it applies "to employees covered by this Agreement." Rural letter carriers, however, are not "covered by this Agreement." Moreover, Article 13 further states that the handbooks of the Postal Service "shall contain nothing that conflicts with this Agreement." To read the ELM language in such a fashion as to allow rural carriers access to APWU bargaining unit work would, in fact, create a conflict with the National Agreement.

According to the APWU, if the Postal Service desires to provide rural letter carriers temporary cross craft assignments to perform APWU bargaining unit work, it should negotiate a provision similar to the Memorandum of Understanding regarding Articles 7, 12 and 13 regarding cross craft assignments (Union Exhibit 12). In this regard, it is also significant that Root's testimony made it clear that crossing crafts into the National Rural Carriers craft would violate its contract.

The Postal Service argues that it is required by law to take the actions it has taken in cases such as the one before the arbitrator. This argument is not persuasive. Arbitrator Snow in case HOC-3N-C-418 (Union Exhibit 20) thoroughly examines and discusses the requirements of the OWCP law and contract obligations. In his examination, he addressed all the arguments raised by the management by the Postal Service in the instant case. The APWU is not challenging the OWCP law or the language in Section 546 of ELM. Rather, the APWU's position is that there is nothing in the law or in the ELM that permits the Postal Service "to disregard the non-inclusion of Rural Carriers into the Cross Craft Memo."

Arbitrator Gamser's award in Case No. N8-NA-0003 provides further support for the APWU in position in this case. In that case, Arbitrator Gamser applied the pertinent contract language to limited duty assignments. This is what the APWU seeks in the current case. There is no specific language in Section 546 which disavows the Article 7 proscription of rural carriers performing APWU bargaining unit work. Rather, the reverse is true — there is specific language in Section 546 which requires the agreement to be followed.

The APWU further contends that Postal Service Exhibits 3-6, which relate to the development of language in Section 546.141 of the ELM, do not compel the result urged by the Postal Service. The APWU does not challenge the language. Article 19 incorporates that

language to apply to employees covered by this Agreement and also requires assignments for employees injured on the job to be in compliance with it.

Postal Service Exhibit 7 also does not compel a different result from the one urged by the APWU. That February 15, 1985 remand to Step 3 for application of Section 546 demonstrates, if anything, that the APWU was challenging in the 1980's cross crafts assignments of rural carriers into the APWU bargaining unit. Contrary to the Postal Service claim, the exhibit does not show that the APWU concluded that there is no absolute prohibition of rural carriers in the clerk craft.

The January 31, 1983 national award by Arbitrator Aaron in Case No. H1C-5D-C-2128 also does not compel a result in favor of the Postal Service. That case does not involve a situation where a rural carrier performed clerk work as a rural carrier, but rather was one where the Postal Service changed the rural carrier to a clerk and provided him with the status of full-time regular. Moreover, in a subsequent arbitration case, the APWU challenged the status of the reassigned employee under Section 546 of the ELM and argued that the Postal Service must comply with the contract, and that under the contract, Article 37 required a part-time flexible status. In this case, Arbitrator Snow reviewed the applicable law and Section 546, and held that the Postal Service must follow the contract (Union Exhibit 20).

Postal Service Exhibit 10 also does not compel a result in favor of the Postal Service. The July 26, 1979 letter from Gildea, on behalf of the Postal Service, which forms the basis of their exhibit, states that only one employee was performing limited duty in the clerk craft. Although it is unclear whether the rural carrier had been changed to a clerk as of January 20, 1979, it is clear that he had become a city carrier as of June 16, 1979. As a city carrier, he can cross the craft under Article 7 and 13 to perform clerk craft assignments. The issue in the instant

case does not appear to have existed at the time of the July 1979 letter. In addition, both Postal Service Exhibits 10 and 11 were authored before the promulgation of the Section 546.2 language which requires the Postal Service to follow the contract for limited duty assignments.

Although the Postal Service argues that its action is justified by past practice, the elements required to establish a binding past practice are not present. The Postal Service, for example, has not demonstrated acceptance of the policy by the National APWU and thus there is no mutual acceptance of the policy. Both Postal Service Exhibits 7 and 10 demonstrate the APWU's position against rural carriers performing APWU bargaining work. In addition, the APWU arbitrated this issue on a regional basis and regional Arbitrators Nathan, Dean, and Odom, (Union Exhibits 21, 22, and 23, respectively) have upheld the APWU position in this issue.

In addition, Arbitrator Snow and his national award in Case No. HOC-3N-C-418, issued on February 7, 1994, dealt with the testimony of many of the same witnesses called in the instant case to establish past practice. He stated, in relevant part:

> Such contractual violations may be justified only if it can be said that the clearest evidence that the employer and the Union mutually agreed to modify the collective bargaining agreement with respect to such assignments. It is insufficient proof to show that a right has been waived merely because no grievance resulted from the alleged violation until this case.

The logic and conclusion of Arbitrator Snow's decision is directly on point in the instant case.

The APWU further argues that Arbitrator Snow's national award in Case Nos. 194 N-41-D 96027608, rendered on April 8, 1998, and J90C-1J-C92056413, rendered on November 4, 1998, also support its position in this case.

As a remedy, the APWU requests a cease and desist order against rural carriers performing APWU bargaining unit work. The APWU also requests the arbitrator remand the case to Step 3 for a remedy to the facts as they existed in the Gwendolyn Durga matter.

For all these reasons, the grievance should be sustained.

The Postal Service Position:

The Postal Service asserts that its workers are covered and protected by the Federal Employee Compensation Act (FECA) which makes certain provisions for the treatment of employees who suffer on-the-job injuries. In essence, FECA (5 CFR 353.304) provides that employees who are injured on-the-job through no fault of their own should not be penalized solely because of their injuries. To that end, the Postal Service is required to make "every effort" to find such employees meaningful work. The FECA requirements have been expressly recognized by the parties in the National Agreement in Article 21, Section 4, Injury Compensation. This language has been in the National Agreement since 1973, and pursuant to this contractual commitment, the Postal Service published Section 546 of the ELM.

Pursuant to the legal obligation of the Postal Service to comply with FECA and the contractual obligation to issue appropriate regulations to comply with FECA, the Postal Service, pursuant to Article 19 of the National Agreement, published Section 546. The parties recognized that Section 546 contained the Postal Service's legal responsibilities to employees with job-related injuries. The language of Section 546 was approved by the APWU pursuant to their rights under Article 19 under the National Agreement. Under Article 19, the APWU may appeal any handbook or manual change to national arbitration if it believes the change is not fair, reasonable, or equitable. No such appeal was made by the APWU regarding Section 546,

including Section 546.141(a). If the APWU disagreed with the language, it had an affirmative duty to exercise its Article 19 rights to challenge such language. It did not, however, object at the time. It is far too late now to challenge procedures put into place by the parties in 1979.

As Bauer testified, there was a major change to FECA regulations in 1974 allowing employees to receive continuation of pay (COP) immediately. This change led to a dramatic increase in the number of claims filed by employees under FECA. The application of Section 546 did not become an issue until a national level grievance was filed by the NALC in April 1979. The NALC's main concern was that injured carriers were being reassigned to limited duty assignments outside of their regular installations and outside their regular work hours. The grievance settlement included the language that is now in Section 546.141(a) of the ELM. The record establishes that the APWU was intimately involved in the development of Section 546.141(a) and, having accepted this language at its inception, it can not now walk away from that acceptance.

It is also clear from the plain language of Section 546 that its terms apply to all employees, including rural carriers. Moreover, Bauer's testimony that this section of the ELM applies to all employees was not rebutted. In fact, the APWU advocate stipulated that it applies to all employees at the hearing. Therefore, there is no disagreement that the language in question applies to rural carriers.

In addition, the Postal Service argues that Article 13 does not apply to this case. To invoke Article 13, the injured employee has to make a reassignment request pursuant to the provisions of Article 13. This was not done in this case and thus the Article 13 is not involved in this case. An analysis of four national arbitration awards by Arbitrator Mittenthal regarding the

applicability of Article 13 makes that clear.[2] In the instant case, the injured rural carrier was placed on temporary limited duty pursuant to the employee's obligations under Article 21 and Section 546.141 of the ELM, and not pursuant to a request under Article A13.

The Postal Service agrees with the APWU that rural carriers are not entitled to make Article 13 requests. In this case, the rural carrier did not do so. However, rural carriers still receive the benefits of FECA, its implementing regulations, and Section 546.141 of the ELM. Accordingly, the Memorandum of Understanding regarding Articles 7, 12 and 13 does not apply in this case.

Further, the Postal Services argues that the Gildea letter of July 26, 1979 put the APWU on notice of the Postal Service's position on this issue, and the APWU failed to object to that position. In fact, after receiving this letter, the APWU concurred in the NALC national settlement that created the language in Section 546.141. It is now too late for the APWU to come forward and challenge this position.

The Postal Service further asserts that the instant case is strikingly similar to a previous national award rendered by Arbitrator Aaron in Case No. H1C-5D-C 2128 on January 24, 1983 (Postal Service Exhibit 9). The APWU's arguments in that case are almost identical to those in the instant case and were rejected by Arbitrator Aaron.

Arbitrator Snow's award in Case No. HOC-3N-C 418, rendered on February 7, 1994, however, is not on point and the APWU's reliance upon it is misplaced. The issue in that was a different one; it was one of status and not whether the employee could be placed in the craft. Similarly the national award of Arbitrator Snow in Case No.194N-4I-D 96027608, issued on

[2] The four national level arbitration awards by Arbitrator Mittenthal are: Case Nos. H8N-5B-C 22251 (November 14, 1983); H1C-3T-C 18210 (June 25, 1984); H1C-4K-C 17373 (January 4, 1985); and H1C-4E-C 35028 (June 12, 1987).

April 8, 1998 and submitted after the arbitrator granted the APWU request to reopen the record, does not compel a result in its favor.

The fact that the APWU signed off on a Step 4 remand to the regional level of the issue of a rural carrier's assignment to limited duty in the clerk craft also supports the Postal Service position in this case (Postal Service Exhibit 7). This grievance was filed nineteen months after the Aaron award and contained the same arguments advanced by the APWU in the instant case. The parties acknowledged in Step 4 letter that:

> there was no national interpretive issue fairly presented as to the meaning and intent of Articles 13 and 21 under the National Agreement. Whether management properly assigned a rural carrier on limited duty in the clerk craft is an issue suitable for regional determination. The parties at that level should apply provisions in Section 546 of the Employee and Labor Relations Manual to the specific facts circumstances.

It is clear from this that the national parties agreed that the pecking order for making limited duty assignments set forth in Section 546 of the ELM should be applied to the local fact circumstances. In other words, the parties should determine if there was work for the injured carrier in his own craft first, based on his physical limitations.

The Postal Service further asserts that its position in this case is supported by the unrebutted practice of the parties. In this regard, the Postal Service produced seven witnesses who collectively covered the entire United States from the mid-1970's to the present and at every level of the Postal Service. They testified that in their experience the Postal Service had placed injured-on-duty rural carriers on temporary limited duty in the clerk craft without objection by the APWU. Although the APWU, on a few occasions, may have expressed a few concerns about whether work was actually available in the rural craft or whether clerk craft employees may not have met work hour guarantees as a result of such a placement, the APWU never challenged the Postal Service right to make such placements pursuant to Section 546 of the ELM. Root, a

steward and officer of the National Rural Letter Carriers Association for twenty-two years, was particularly helpful in this regard. It was his testimony that he was aware of this practice on thousands of occasions beginning in the mid- to late 1970's. The testimonies of the other witnesses were that this was consistent with their personal experiences. The APWU offered no rebuttal testimony on this issue. Even if the practice does not rise to a binding past practice, it, at least, provides valuable insight into how the other parties interpreted the language at issue.

Moreover, the APWU's contract analysis is flawed and should be rejected. First, the APWU argues incorrectly that because Article 1 excludes rural carriers from coverage rural carriers are somehow not afforded the protections and benefits of FECA regulations and the ELM. In this respect, how can the APWU argue that Article 1.2 absolutely prohibits rural carriers from performing clerk duties but does not have the same meaning for letter carriers and mail handlers? Second, the APWU's interpretation of Article 19 is baffling. Contrary to the APWU, Article 19 does not construct walls between each union, but simply provides a mechanism for the Postal Service to make changes to the handbooks and manuals in mid-term as long as proposed changes are not in conflict with or inconsistent with the National Agreement and such changes are fair, reasonable, and equitable. The ELM applies to all employees. Third, the APWU allusion to a vague requirement of Article 37 that supposedly requires the Postal Service to create clerk duty assignments as a result of working injured rural carriers in the clerk craft on temporary limited duty is also without merit. Not only is this a new issue raised for first time at arbitration, and therefore improper, but it also has no basis in fact or logic. As Arbitrator Aaron recognized in Case No. H8N-5B-C 17682, rendered on April 18, 1983, all facts relied upon by both parties must be fully disclosed before the arbitration hearing.

Throughout the grievance procedure, the APWU consistently failed to raise the Article 37 argument. Accepting the union argument in this regard would effectively shut down the entire injury compensation program in the Postal Service.

The regional awards submitted by the APWU at the hearing should not dictate the result in its favor. First, although national awards are binding on regional arbitrators, regional awards are not binding on national arbitrators. Second, the APWU did not submit the full range of regional awards on this issue but only presented a partial sampling which slanted the regional awards on this issue. The truth is that there is a mixed history of this issue at the regional level. Regional awards in Case Nos. W7C-5G-C 16514 (Abernathy: May 28, 1993); S7C-3C-C 29417 (Moberly: April 13, 1992); and E4C-2C-C 47905 (Parkinson: October 1, 1991) are examples which favor the Postal Service position. Furthermore, the regional arbitration awards relied upon the APWU all share a common problem — the record in each case was not complete. In other words, the regional arbitrators did not have the benefit of the evidence, witnesses, or arguments that had been made at the national level.

Finally, the APWU has simply failed to meet its burden of proof in this case. They have produced no witnesses, no express language, no past practice, no grievance settlements, and no controlling arbitration awards that support its theories. At best, it presented an incomplete, one-sided view of regional arbitration awards in which the regional arbitrators were not presented all the relevant and national awards, and they presented a mischaracterization of the Snow national award.

For all these reasons, the grievance must be denied in its entirety.

DISCUSSION AND OPINION

After careful examination and evaluation of the evidence submitted and the arguments made, it is my conclusion that the grievance should be denied. My reasons for this conclusion are as follows:

Analysis begins with the fact that the Postal Service under Federal law is required to make certain provisions for the treatment of employee who are injured on-the-job. Under the Federal Employee Compensation Act (FECA), the Postal Service, in essence, is required to make "every effort" to find work for those employees injured on the job and who are able to return to work in a limited duty capacity. As the law states, in relevant part, regarding partially recovered injured employees:

> Agencies must make every effort to restore, according to the circumstances in each case, an employee or former employee who is partially recovered from a compensible injury and who is able to return to limited duty. [3]

Moreover, the requirements of FECA have been specifically incorporated by the parties into the National Agreement since 1973 in Article 21, Section 4, entitled, Injury Compensation. That section states:

> Employees covered by this Agreement shall be covered by Sub-Chapter 81 of Title 5, and any amendment there to, relating to compensation for work injuries. The Employer will promulgate appropriate regulations which comply with applicable regulations of the Office of Workers Compensation Programs and any amendments thereto.

Pursuant to the Postal Service's legal obligations under FECA and contractual obligations under Article 21, Section 4, the Postal Service promulgated Section 546 of ELM relating to the Injury Compensation Program. Section 546 clearly acknowledges the Postal Service's legal responsibility to employees with job-related injuries and sets forth a procedure for resolution of

[3] 5-CFR 353.304. (Postal Service Exhibit 2)

these claims. Section 546.141(a) is particularly important in the instant case. This section sets forth the procedures for current employees who have partially overcome their disability and considerations in effecting limited duty assignments. In essence, the Postal Service is required when an employee has partially overcome a disability, to make every effort toward assigning limited duty to the employee within the employee's medical restrictions and to minimize any adverse or disruptive impact on the employee. In making the limited duty assignment, the Postal Service is also directed to follow a certain order. For example, under Section 546.141 (a)(1), if there is adequate work within the employee's craft, within his medical limitations in his regularly assigned work facility, and during his regularly assigned work hours, then that work shall constitute the limited duty to which the employee is assigned. Under Section 546.141(a)(2), if adequate duties are not available within the craft, then the Postal Service may assign other work within the facility; i.e. work within another craft. It was under this provision that the rural carrier in this case, Gwendolyn Durga, was assigned APWU craft duties. Durga sustained her work related injury in December of 1991. In early January 1992, she was assigned limited duty work within her medical restrictions in the general office of the Traverse City Post Office. In July 1992, after the Postal Service received additional medical information, it assigned her limited duty work as a distribution clerk at the mail processing annex because there was no other work within her new work limitations and within her craft.

This assignment was appropriate under Section 546.141. First, the plain language of the section clearly applies to all employees, including rural carriers. Moreover, this interpretation is consistent with the unrebutted testimony of Bauer. Finally, the APWU does not dispute that the language of the section applies to all employees. In fact, the union representative at the hearing stipulated to this point.

Not only is it clear that Section 546.141 was promulgated to implement the external law responsibilities of the Postal Service to employees injured on the job, but it is also clear that the APWU was aware of the Section 546.141 language and, in effect, approved it pursuant to Article 19. Under Article 19, if the APWU objects to proposed changes in handbooks, manuals, and regulations, it may challenge them in accordance with the procedures set forth therein. Despite its awareness, it did not challenge or otherwise object to the issuance of Section 546.141 pursuant to Article 19. In light of this, there is no conflict with the National Agreement as claimed by the APWU.

Not only did the APWU not challenge the issuance of the regulation through Article 19, but the evidence also establishes that the APWU had no problem with Section 546.141 at the time of its issuance. The language of Section 546.141 grew out of the settlement of a grievance filed by the NALC in 1979. The language agreed to as part of the settlement is the language that formed the basis then (and similarly now) of Section 546.14. Although the grievance was filed by and the settlement reached with the NALC, the evidence demonstrates that the APWU was well aware of the issue and its resolution. For example, on July 30, 1979, the APWU was provided a copy of the grievance file regarding the issue. On October 26, 1979, Henry, General Manager, Grievance Division of the Postal Service, in a letter to the NALC President referring to the language that subsequently became the basis of Section 546.141, indicated that "this language" was language which the NALC and the "other Unions with whom the [NALC] discussed it are amenable" to, and further indicated that this language "incorporates procedures relative to the assignment of employees to limited duty that [the NALC] proposed." Bauer's testimony that the references to "other Unions" included the APWU was not rebutted by the APWU. Thus, it is clear that the APWU was aware of, understood, and agreed to the procedures

established in Section 546.141 of the ELM which permits cross-craft assignments for temporary limited duty as a result of on-the-job injuries.

Further support for the conclusion reached here is derived from the February 15, 1985 remand to Step 3 of a national level grievance raising the question of whether management properly assigned clerk craft duties to an employee in the rural carrier craft. In the remand of that grievance to Step 3, the parties agreed that there was no national interpretive issue presented as to the meaning and intent of Articles 13 and 21 of the National Agreement. The parties further agreed:

> Whether management properly assigned a rural carrier limited duties in the clerk craft is an issue suitable to regional determination. The parties at that level should apply provisions in Part 546 of the Employee and Labor Relations Manual to the specific fact circumstances. (Emphases supplied.)

Such resolution makes clear that in 1985 the APWU was not asserting an absolute prohibition against all limited duty assignments of rural letter carriers to the clerk craft. That is the only reasonable interpretation of the remand language. If there was an absolute prohibition against limited duty cross-craft assignments for rural carriers, there would be no need to have it resolved on the regional level applying the provisions of the ELM to the specific fact circumstances. In other words, if there was an absolute prohibition, as argued by the APWU in this case, there would never be any fact-specific circumstances under Part 546 of the ELM to be applied.

In summary, Section 546 covers all employees, including rural letter carriers. Moreover, the specific terms of Section 546 provides temporary limited duty in cross-craft assignments, in appropriate circumstances, for employees who are injured on-the-job. Furthermore, the APWU was aware of, participated in, was involved in the development of, and understood the changes which led to the Section 546 language and procedures. Despite this understanding and awareness, it never challenged Section 546 under or through the Article 19 procedures.

In resolving this grievance, it is important to note that the assignment in question was not made under Article 13 of the National Agreement and thus this Article is not relevant to the resolution of this matter. The reason this is not an Article 13 is case because Article 13 is invoked only if the injured employee makes a reassignment request pursuant to its provisions. In this case, there is no evidence that such a reassignment request was ever made. Rather, as the Postal Service points out in its brief, the instant case involves the application of FECA through Article 21, Section 4, and as provided for in Section 546.141 of the ELM. In other words, the instant case is a Section 546.141 matter and not one under Article 13. In fact, the Postal Service made it clear at the hearing and in its brief that it agrees with the APWU that rural carriers are not entitled to make Article 13 requests. Its position in this case, however – and it is one that the arbitrator agrees with – is that rural carries are entitled to receive the benefits of FECA, as it is implemented through Postal Regulations, including Section 546.141 of the ELM.

For this same reason, the APWU argument regarding the effect of the Memorandum of Understanding relating to Articles 7, 12, and 13 is not persuasive. Since Article 13 is not involved – neither are Articles 7 or 12 – the Memorandum of Understanding does not apply to the situation under review. Rather, the case is one which involved the interpretation and application of Section 546.141 of the ELM, not Article 13, and Section 546.141 applies to all employees, including rural carriers. Moreover, it should be pointed out that the Memorandum of Understanding not only does not but could not infringe upon rural carrier rights under FECA and its implementing regulations.

Moreover, the four national arbitration awards of Arbitrator Mittenthal, shed persuasive light on the relationship between Article 13 and Section 546.141 and buttress the conclusion

reached here.[4] As the Postal Service noted in its brief, these national level awards concerning light and limited duty set forth a variety of principles relevant to this case: (1) Article 13 and Section 546.141 operate independent of each other; (2) Article 13 is triggered by an employee request; (3) Section 546.141 automatically applies; (4) Section 546.141 applies to all employees; (5) Section 546.141 sets forth the Postal Service's responsibilities under FECA; (6) Section 546.141 is incorporated into the National Agreement through Article 19; and (7) Article 13 and Section 546.141 provide for different levels of management responsibility. It is clear from these observations that since there is no evidence that Durga requested a reassignment, Article 13 does not apply. Section 546.141, however, which applies to all employees, including rural carriers, does govern.

The conclusion reached in this case is also supported by Arbitrator Aaron's national award in Case No. H1C-5D-C 2128, issued on January 24, 1983. The facts and arguments in that case are remarkably similar to this one. In the Aaron award, the APWU challenged the Postal Service practice of making permanent reassignments of rural carriers injured on-the-job into the clerk craft. To support its position, the APWU argued that Article 1, Section 2, excluded rural carriers from coverage and questioned whether external law and regulations, particularly those of the Office and Personal Management (OPM), should prevail over the seemingly inconsistent language in the National Agreement the APWU negotiated with the Postal Service. In agreeing with the Postal Service position and upholding the reassignment of rural carries injured on-the-job into the clerk craft, Arbitrator Aaron, in relevant part, stated:

> It is obviously too late in the day for the Union to challenge the proposition that FECA regulations can augment or supplement reemployed persons' contractual rights. The language of Article 21, Section 4 of the 1981-1984 Agreement, previously quoted,

[4] The four national level arbitration awards by Arbitrator Mittenthal are: Case Nos. H8N-5B-C 22251 (November 14, 1983); H1C- 3T-C 18210 (June 25, 1985); H1C-4K-C 17373 (January 4, 1985); and H1C-4E-C 35028 (June 12, 1987).

> makes clear that the rights of such person can be augmented or supplemented by federal regulations, with which the Postal Service must comply. If the Union objects to the changes to the relevant provisions introduced by the Postal Service in purported compliance with government regulations, it may challenge them in accordance with procedures set forth in Article 19 of the Agreement, previously quoted. This it failed to do. Moreover, it raised no objection to the statement in Gildea's letter of 26 July 1979 to Newman, previously quoted, which clearly anticipated the reason for the action taken by the Postal Service in the case of Akins....In any case, the applicable regulations, previously quoted, make it clear that an employee who has partially recovered from an on-the-job accident, and for whom no work within prescribed medical limitations in his or her own craft is available, must be offered a position in another craft in the same work facility that minimizes "adverse or disruptive impact on the employee." Inasmuch as Akins had been a full-time regular rural carrier, the Postal Service was faithful to the applicable government regulation in assigning her to a full-time regular position in the clerk craft that met her medical restrictions.

This rationale from the Aaron award is most persuasive. Although the case before Arbitrator Aaron involved a permanent reassignment of a rural carrier rather than the assignment of a rural carrier to temporary limited duty as in the instant case, that factual distinction is not significant for purposes of resolving this grievance. As the Postal Service pointed out in its brief, both the action in the Aaron case and in this case arose out of the Postal Service's authority pursuant to Section 546.141 of the ELM. Moreover, if anything, the temporary limited duty situation involved in the instant case is much less intrusive on the clerk craft than the permanent reassignment involved in the Aaron award.

Contrary to the APWU argument, I do not agree that the logic of and conclusion reached by Arbitrator Snow in Case No. H0C-3N-C 418, (February 7, 1994) compels a result in its favor. Unlike the instant case where the APWU has questioned the Postal Service's ability to reassign a rural carrier to the clerk craft on temporary limited duty, the issue in the Snow award was one of status; i.e. what should be the status of the individual being placed into the other craft. The grievance in that case questioned whether the reassignment of a former full-time city carrier craft employee to full-time status rather than part-time flexible clerk status violated Article 37 of the

National Agreement. The APWU argued that the conversion of the former full-time city carrier to full-time status in the clerk craft was to the detriment of at least ten part-time flexible distribution clerks who enjoyed greater seniority than the reassigned carrier. In sustaining the grievance, Arbitrator Snow concluded that the city carrier status should have been part-time and that the seniority rights of the part-time flexible employees in the clerk craft should not have been impaired by the placement of the city carrier into the clerk craft. The instant case, however, deals with the basic question of whether reassignment to the other craft can be made at all.

In addition, since the Snow case dealt with a former employee, the analysis in that case was under Section 546.141(b) and not Section 546.141(a) which governs current employees, as in the instant case. The requirements for each category are distinctly different and for these reasons, the February 7, 1994 Snow award is not on point.[5]

In support of its position, the Postal Service also argues that its position is justified by the unrebutted past practice of the parties. To that end, it presented the testimony of seven separate witnesses. Although it is clear from the testimony of these witnesses that consistently over the years the Postal Service made such cross-craft assignments for rural carriers on limited duty with the knowledge of and without objection from the APWU, it is not necessary, in light of the other reasons given in this Opinion for sustaining the grievance, to determine whether a binding past practice has existed. At a minimum, however, the practice over the years provides valuable insight into how the parties interpreted the language at issue, and supports the conclusion reached in this case. As the Postal Service noted, it is clear from the practice, as expressed by the testimony and the other evidence, that "at all levels, and at all locations, the parties

[5] In Case No. H94N-4H-C 96090200 (November 4, 1998), another national award by Arbitrator Snow discussed later in the Opinion, Arbitrator Snow recognized that the former employee status "constitutes a fundamental distinction because ELM Section 546.141 treats former and current employee differently."

interpreted ELM 546.141 to allow placement of injured rural carriers on temporary limited duty into the clerk craft."

At the core of the APWU case is the contention that because Article 1 excludes rural carriers from coverage, rural carriers therefore cannot receive the protections and benefits of FECA and its implementing regulations, including Section 546. I cannot agree. Article 1 merely defines the scope of the bargaining unit represented by the APWU. It means that the APWU is not entitled to bargain for rural letter carriers and that its National Agreement does not apply to them. It cannot, by itself, negate, destroy, or cancel out other rights of employees which arise from other sources. Article 1, Section 2, lists the groups that are excluded from coverage under Article 1, Section 1. Item 7 on the list of those excluded is the rural letter carriers. This exclusion does not mean that the rural carriers are not afforded the protections and benefits of FECA and its implementing regulations. Moreover, Article 1, Section 2 exclusions also encompass the Mail Handlers (Item 8) and the Letter Carriers (Item 9). Despite their exclusion, it is clear city Letter Carriers and the Mail Handlers are not absolutely precluded from working limited duty in the clerk craft. For example, pursuant to the Memorandum of Understanding, cross-craft assignments pursuant to Articles 7, 12, and 13 are permitted. These assignments, however, are clearly not available to rural carriers. But these are not the only reasons why limited duty assignments may be made to Letter Carriers and Mail Handlers. As is clear from the record, such limited duty assignments of employees injured on the job are also made under Section 546.141 of the ELM, which applies to all employees, and, as Arbitrator Mittenthal made clear and as discussed above, Article 13 and Section 546.141 operate independent of each other.

Both parties have submitted regional awards on this issue to the arbitrator. The parties recognize, of course, that regional awards are not binding on national arbitrators, but suggest

through their offer, that they are persuasive in their rationale and logic on the point at issue. As should be clear from the conclusion reached in this case, I found those submitted by the Postal Service more helpful. In this regard, I found the analysis of Arbitrator Parkinson in Case No. E4C-2UC-C 47905 (October 1, 1991) particularly helpful and valuable.

I have also examined very carefully and closely the two national level arbitration awards issued by Arbitrator Snow in Case Nos. 194N-4I-D 96027608 (April 8, 1998) and H94N-4H-C 96090200 (November 4, 1998). Both awards were submitted after the briefs were filed in this case and pursuant to successful motions by the APWU to reopen the record for their submission. As regards the April 8, 1998 award, it is my conclusion that it does not compel a result different from the one reached here. The issue before Arbitrator Snow in that case was whether Article 29 of the NALC National Agreement required the Postal Service to make temporary cross-craft assignments to provide work for a carrier whose driver's license has been suspended or revoked. The NALC had challenged the decision of the Postal Service to remove the letter carrier whose driver's license had been suspended and for whom there were no non-driving duties in the letter carrier craft. In concluding that Article 29 of the NALC Agreement requires the Postal Service to make temporary cross-craft assignments to provide work for a carrier whose occupational driver's license has been suspended or revoked, Arbitrator Snow noted that the Postal Service "is required to do so in a manner consistent with the APWU collective bargaining agreement" and that "[i]n instances where it is impractical to fulfill its contractual obligation under both agreements, the [Postal Service] is without contractual authority to remove such employee." Thus, Arbitrator Snow's award and underlying analysis had to do with Article 29 of the NALC Agreement and did not involve the applicability or analysis of Section 546 of the ELM and its requirements. Such a distinction is a significant one since, as the analysis in the instant case

makes clear, Section 546 and its requirements are an implementation of the external law requirements of FECA.

As regards Arbitrator Snow's November 1998 award, it is also my conclusion that it does not compel a result different from the one reached here. The grievant in that case was a full-time letter carrier who sustained an on-the-job injury which prevented her from performing regular assigned duties. Ultimately, the Postal Service made her a "rehabilitation job offer" according to which she would be permanently reassigned to a "modified PTF" position in the clerk craft. After the grievant accepted the position under protest, the NALC filed a grievance challenging the Postal Service action. The issue for Arbitrator Snow was limited to whether the grievant should have been assigned to the clerk craft as a part-time flexible rather than as a full-time regular employee and not, as in the instant case, whether there is an absolute prohibition of cross-craft assignments for temporary limited duty for employees injured on-the-job. Although the application of Section 546.141 of the ELM was discussed by Arbitrator Snow in that case, the discussion did not reach the issue presented here. The core of the dispute before Arbitrator Snow was the meaning of that part of Section 546.141(a) which requires the Postal Service to "minimize any adverse or disruptive impact on the employee." He did not, however, discuss the issue of Section 546.141 as an implementing regulation of the external law requirement of FECA. Again, as in the 1993 Snow award, the issue under consideration related more to status rather than the more fundamental question of whether there is an absolute prohibition.

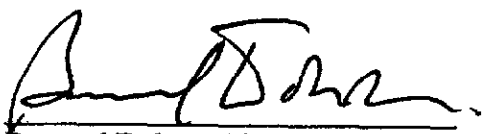
Finally, in reaching my conclusion in this case, I have carefully considered and examined all of the arguments put forth by the APWU, including the applicability of Articles 37 and 30, and whether specifically addressed above or not, and find them without merit.

For all these reasons, the grievance is denied.

AWARD

For all the reasons set forth in the Discussion and Opinion, the grievance is denied.

June 14, 1999
Alexandria, VA



Bernard Dobranski
Arbitrator