

Updated Report on National-Level Arbitration

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The following report represents an update on national-level arbitration (excluding pre-arbitration settlements, unless previously listed on report) since the March 2004 report, including recent decisions, those cases pending a decision, or tentatively scheduled to be heard in arbitration.

Recent Decisions

Qualification Standards for Driver Instructor and Examiner (DIE) – Arbitrator Das ruled that the Postal Service violated Article 19 by not giving the required 60-days notice to the union before implementing changes and by making revisions that were not fair, reasonable and equitable. He ordered that the Qualification Standard be revised to state that: "Before being assigned, promoted, or reassigned to this position, candidate must have qualified on all motor vehicles used in that local post office."

This case involved a dispute over the revision to the Qualification Standards for the position of Driver Instructor and Examiner, Level 6. The specific area in dispute involved previous language that provided an applicant "must be qualified on all vehicles" that was changed to "must be able to demonstrate the abilities to qualify." It was the APWU position that the revision in dispute permits greater opportunities for non-motor vehicle drivers (such as carriers) to be selected. In addition, previous language provided that employees in this position maintain certain records; however, the Postal Service changed "maintained" to "initiate." We contended that the revision enabled someone other than a DIE to be responsible for maintaining records. (Case#Q90V-4Q-C 95004852; 4/13/2004)

Pending Decisions

Address Information System Specialist – The implementation of this award is still pending resolution on several post-award issues. We previously reported on an award issued by Arbitrator Snow dated April 29, 2003, sustaining the union's grievance that challenged the Postal Service's exclusion of the Address Management System (AMS) Specialist position from the bargaining unit. The National Association of Letter Carriers (NALC) intervened. This case involved a

dispute over whether the positions of Address Information System Specialist, EAS 15, and/or the work being performed, must be included in the APWU bargaining unit. The arbitrator ruled that the AMS Specialist position is a part of the APWU bargaining unit and that it is a violation of Article 1.2 of the National Agreement to exclude the position and the disputed work from the bargaining unit. Arbitrator Snow retained jurisdiction for ninety (90) days in order to resolve any problems resulting from the remedy in the award. (Case#Q94C-4Q-C 98117564)

Post-award Issues

After the decision was issued, the NALC asked the arbitrator for a clarification of his award. The NALC contends that they only agreed to defer their presentation on the issue of which craft should have jurisdiction over the AMS position with the understanding that the arbitrator would bifurcate his award, ruling first on whether the position should be bargaining unit work and, if so, leaving it to the remedy phase to hear additional evidence as to which craft the work belongs. The Postal Service asked the arbitrator to withdraw the entire award, and allow all parties to present additional evidence on the merits of the grievance.

It is the APWU position that there was no tripartite agreement to bifurcate the award (the Postal Service never agreed). Furthermore, the parties gave the arbitrator authority to frame the issue, and in doing so as well as closing the record and issuing a final and binding award, the arbitrator resolved the issue of craft jurisdiction within his award. In addition, the arbitrator does not have the authority to withdraw and re-litigate a final and binding award.

The parties are still awaiting a response from Arbitrator Snow on these various issues.

Unit Clarification (UC) Petition

The APWU originally filed unit clarification ("UC") petitions for the clerk and maintenance crafts claiming that certain EAS positions belonged in the bargaining unit. The parties thereafter settled a number of disputes and agreed to submit the remaining issues to arbitration, and the Union therefore withdrew the UC petitions.

However, after Arbitrator Snow issued his April 29th decision, the Postal Service also responded by filing its own UC petition asking the NLRB to find that all contested EAS positions were outside the bargaining unit. The Union filed a motion to dismiss the petition, which Region 5 granted. The Regional Director ruled that the Postal Service had clearly agreed to have these issues decided by an arbitrator, not the NLRB, and that to rule otherwise would permit the Postal Service "to pick and choose which provisions [of the agreement the Postal

Service] wishes to invoke and which it prefers to avoid" - Region 5 quoting from an earlier Board decision (*Verizon Information Systems, 335 NLRB 558, 560-561 – 2001*).

The Postal Service sought a review by the Board, and the APWU filed opposition to the review. On December 24, 2003, the Board ruled that the petition "raises substantial issues warranting review." We are still awaiting a decision from the Board.

Publication 71 – These cases involved a dispute over the return-to-duty requirements in Publication 71. The issue involves whether the Postal Service is prohibited from imposing additional requirements that employees must satisfy in order to return to work, above and beyond what is required by the FMLA. This case was heard on Feb. 21, 2003, and is now pending the submission of post-hearing briefs. Please note that we were also in court over the same issue. The court denied our case on this issue, and we appealed the court's decision. (Case#Q94C-4Q-C 97089644 & Q98C-4Q-C 01089809)

Current Status of Court Case

On July 25, 2003, the U.S. District Court for the Central District of Illinois in *Harrell v. USPS*, No. 02-2056 (C.D. Ill.), found that the Postal Service may legally enforce the return to work provisions set forth in ELM Section 865 when employees have been on approved FMLA leave for more than twenty-one (21) days. The court ruled that the Postal Service may require employees, in order to return to work from FMLA approved absences of 21 days or more, to provide documentation of fitness for duty beyond the certification required under the FMLA.

The Court's decision directly contradicts another decision in the same federal court circuit, *Routes v. Henderson*, 58 F. Supp.2d (S.D. Ind. 1999). We appealed the Court's decision granting the Postal Service the right to substitute its return to work procedure with that set forth in the FMLA, and this appeal is now pending a decision.

Intra-Craft Cross-Wage Level Assignments – This case involves a dispute over whether Article 7, Section 2.B limits management's rights to assign clerks to available work in the same wage level in the event of insufficient work on any particular day. In an interim award dated 12/13/02, Arbitrator Das concluded that the dispute is interpretive and therefore arbitrable. The issue to be decided is whether Article 7.2 applies to, and is violated by, intra-craft cross-wage level assignments such as level 5/6 to perform duties in level 4 assignments. There were three days of hearings on the merits. The last two days of hearings took

place on August 14 and 15, 2003, and the case is now pending a decision. (Case#C90C-1C-C 93018526)

Custodial Work – This case involves a dispute over whether management violated the National Agreement when it failed to perform the required *custodial cleaning work noted on Line J of PS Form 4852*. There were four days of hearings. The last two days of hearing took place on September 11 and 12, 2003, and the case is now pending a decision. (Case#I94T-4I-C 98116745)

Arbitrability of Article 1.6.B Case – The issue in this case involves an Article 1.6.B dispute initiated at Step 4 by the Postal Service. In an earlier decision on the issue of arbitrability dated December 31, 2003, Arbitrator Das concluded that arbitrability of this case at the national level depends on whether the union disagrees with management’s position as delineated at arbitration.

The Postal Service’s position is that consistent with the exception in Article 1.6.B of the National Agreement, as interpreted in the 1978 Garrett Award (Case No. AC-NAT-5221), a supervisor at a small post office, whose position description includes performance of bargaining unit duties, may continue to perform those duties historically performed by a supervisor at that office on a daily, regular or routine basis, where there has been no shift or transfer of work or change in the amount of such duties performed by the supervisor. Its argument is that the performance of bargaining unit duties under these circumstances does not violate Article 1.6.B. Arbitrator Das ruled that if the union disagrees with the Postal Service’s position, this dispute is arbitrable and should be heard on the merits. *The APWU disagreed with the Postal Service position, and this case was scheduled and heard on the merits on April 15, 2004. The case is now pending a decision. (USPS #Q98C-4Q-C 0123894)*

Sunday Premium for Personal Schedule Changes – This case involves a dispute over whether Management violates the National Agreement by not compensating employees who have requested a temporary schedule change for their personal convenience with Sunday Premium Pay for time worked on Sunday, if Sunday was not worked during their regular work schedule. The last day of hearings took place on May 18, 2004, and the case is now pending a decision. (Case #H7C-4S-C 29885/I90C-1I-C 91032559)

RMD/Leave Related Dispute – This case involves a dispute over the Postal Service’s unilateral implementation of the Resource Management Database (RMD), its web-based enterprise Resource Management System (eRMS) and related leave policies and practices affecting wages, hours and other terms and conditions of employment. The issues in this case involve (1) management requesting the nature of illness when an employee calls in sick; (2) implementation of a rule that if the employee fails to request a third medical

opinion, the Employer's second opinion is final and binding; and (3) the requirement for medical documentation when substituting paid leave for unpaid FMLA leave. This case was heard and concluded in arbitration October 16 and 17, 2003.

However, subsequent to the closing of the hearing, the APWU sought permission from the arbitrator to add two exhibits to the record in this case that were not available at the time of the hearing. The APWU contends that the two exhibits are directly material to the parties' dispute over the necessity of asking for descriptions of the nature of employees' illnesses or injuries, and as such likely to influence the arbitrator's decision on the propriety of the Postal Service's position in this dispute. Over the objection of the Postal Service, Arbitrator Das granted the Union's request to add the two exhibits to the record, and granted the Postal service the opportunity to respond with additional testimony and exhibits. The hearing took place on May 19, 2004, and is now pending a decision. (Case#Q00C-4Q-C03126482)

Cases Scheduled to be Heard

Unilateral Assignment and Designation of Skill Levels – This case involves a dispute over the Postal Service's unilateral designation of skill levels and estimated times for work performance and severity. There have been five (5) days of hearings. The most recent hearings took place on February 24 & 25, 2004. The case is scheduled to be continued (Union rebuttal) and heard on July 27, 2004. (Case#Q98C-4Q-C 00183263)

Changes to Chapter 530 of the ASM – We previously reported by decision dated June 21, 2002, that Arbitrator Das sustained the APWU challenges to 535.111, 535.23, 535.262 and 531.52 of the ASM and remanded those provisions to the parties for further Article 19 discussions consistent with his findings. In regard to 535.111, he found that some change in this section is necessary because of adjustment to the changed maintenance situation resulting from the decentralization of mail processing operations and establishment of the SMP position. However, Arbitrator Das concluded the change made by the Postal Service, which applies across the board to maintenance of postal equipment in all postal plants and facilities, does not correspond to that need.

In addition, he found that there was no evidence to support the need to change the standard in Section 525.23 and 353.262. Therefore, he determined that there was no basis to conclude that the changes were fair, reasonable and equitable and he remanded the issue to the parties for further Article 19 discussion, consistent with the finding in this decision.

In regard to 531.52, Arbitrator Das concluded that on its face, the change creates a result that is not fair, reasonable and equitable, but could easily be corrected. He noted that the revised provision could not be read in a vacuum separate from Section 531.62 and the Postal Service offered no reason why documents should not go to all appropriate offices; he therefore remanded this change to the parties for discussion.

We have outstanding issues relating to the Das' decision that have not been resolved to the APWU's satisfaction; therefore the parties have tentatively agreed to schedule our disagreements for arbitration on July 28, 2004.