In the Matter of the Arbitration	)	
	)	Grievant: P. Henry
between	)	
	)	Post Office: Hartford, CT.
UNITED STATES POSTAL SERVICE	)	
	)	Case No. B06N-4B -C 09401562
and	)	
	)	Union No. 0906106501
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	)	

BEFORE: Donald J. Barrett, Arbitrator

APPEARANCES:

For the U. S. Postal Service: Bruce Harvey, LR Specialist

For the Union: Charles Carroll, Regional Advocate

Place of Hearing: Hartford, CT.

Date of Hearing: February 12, 2010

AWARD: The grievance is Sustained

Date of Award: February 22, 2010

AWARD SUMMARY

For the reasons set forth within the Discussion, I find that the Union sufficiently demonstrated a violation of the National Agreement by the Service, and therefore, the grievance is sustained.

OPINION

STATEMENT OF PROCEEDINGS:

This matter was presented at an arbitration hearing on February 12, 2010 at the Hartford, CT. mail facility, pursuant to the grievance-arbitration provisions of the 2006-2011 Collective Bargaining Agreement (National Agreement or Agreement) between the US Postal Service (Service) and The National Association of Letter Carriers (Union). The parties to this hearing were given a full and fair opportunity to be heard, to present evidence, and argument, and to present witnesses in support of their respective positions. Each party called two witnesses, who offered their testimony after an oath was administered.

Both parties submitted previously issued arbitration decisions for review and consideration in support of their respective positions.

The parties submitted **JOINT EXHIBITS** that consisted of the following:

J-1 - The National Agreement
J-2 - Moving papers, consisting of Pages 1-91

The **UNION** submitted two exhibits consisting of:

U-1 - A letter from A.J. Johnson, USPS to William H. Young, NALC dated August 19, 2005.
U-2 - Pre-arbitration settlement signed by Alan S. Moore, USPS and William H. Young, NALC dated June 18, 2009.

The **SERVICE** submitted one exhibit consisting of:

S-1 - Script for Patricia Henry from Orthopedic Associates of Hartford, P.C. dated August, 2009.

Both parties presented **Opening & Closing Statements.**

ISSUE AS FRAMED

The parties agreed that the Issue shall be that as stated by the Step B team:

"Did management violate Articles 5, 15, 19, 23 and 30 of the National Agreement when they failed to return the Grievant back to work even though she has provided paper work and authorization from her doctor to return to work."

There was no **STIPULATED FACTS** that could be agreed to by the parties.

BACKGROUND

The Union argues that the grievant suffered an "on-the-job" injury on October 14, 2008. She was provided a "job offer" by the Service dated December 15, 2008, that the grievant accepted and returned dated May, 14, 2009. They further argue that the grievant provided medical documentation dated May 15, 2009, June 1, 2009 and July 7, 2009, that medically cleared her to return to work, yet the Service failed to return her to such.

The Service argues that at the time they made the "job offer", there was such work available but after that period of time, and due to a "tour compression" of jobs and work hours, the subject work offered to the grievant was no longer available.

They argue that there is no longer any work available that could be offered to the grievant, with her restrictions, and she has been referred to vocational rehabilitation under the Office of Workman's Compensation Program. They further argue that the grievant has failed to respond to that referral.

CONTRACT PROVISIONS CITED

ARTICLE 5 - PROHIBITION OF UNILATERAL ACTION

"The Employer will not take any actions affecting wages, hours and other terms and conditions of employment as defined in Section 8(d) of the National Labor Relations Act which violate the terms of this Agreement or are otherwise inconsistent with its obligations under law."

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 Union which involves the interpretation, application of, or compliance with provisions of this Agreement or any local Memorandum of Understanding not in conflict with this Agreement."

ARTICLE 19 - HANDBOOKS AND MANUALS

" Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working conditions, as they apply to employees covered by the Agreement, and shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions."

ARTICLE 23 - RIGHTS OF UNION OFFICIALS TO ENTER POSTAL INSTALLATIONS

"Upon reasonable notice to the Employer, duly authorized representatives of the Union shall be permitted to enter postal installations for the purpose of performing and engaging in official union duties and business related to the Collective Bargaining Agreement. There shall be no interruption of the work of employees due to such visits and representatives shall adhere to the established security regulations."

ARTICLE 30 - LOCAL IMPLEMENTATION

"A. Presently effective local memoranda of understanding not inconsistent or in conflict with the 2006 National Agreement shall remain in effect during the term of this Agreement unless changed by mutual agreement pursuant to the local implementation procedure set forth below or, as a result of an arbitration award or settlement arising from either party's impasse of an item from the presently effective local memorandum of understanding (LMOU)."

POSITION OF THE PARTIES AT ARBITRATION

NATIONAL ASSOCIATION OF LETTER CARRIERS (UNION)

The Union maintains that after the grievant provided medical documentation clearing her to return to work, the Service failed to allow her to do so. The Union states that the grievant returned a "job-offer" from the Service dated December 15, 2008 (Form 2499) that was date stamped May 11, 2009 and signed by the grievant on May 14, 2009, that, in effect, accepted the "job offer." They further maintain that the form, CA-20 dated May 15, 2009 established that the grievant could work four hours per day, four days per week with a lifting restriction of 10 pounds. (See J-2, Page 56 & 75) This is essentially the same restrictions associated with her earlier on the job injury.

The Union argues that the December 15, 2008 job offer was for the same duties, hours, days off and restrictions as she enjoyed due to the previous injury.

The Union further maintains that the grievant submitted another form CA-20, Physician's Report dated June 1, 2009 (See J-2, Page 72) that cleared her to return to duty and yet another CA-20 date stamped July 10, 2009 (See J-2, Page 65) that cleared her for a return to a duty status.

The Union argues that in spite of the grievant's willingness to accept the job offer and return to duty, the Service failed to return her to duty. The Union maintains that they attempted on numerous occasions to discuss this matter with the Injury Compensation Specialist, with no success. They claim that this person continually stated that there was "confusion" over the grievant's paperwork that needed to be clarified. The Union argues that the grievant should have been returned to a duty status on June 1, 2009 and the Service's failure to do so violates the National Agreement.

US POSTAL SERVICE (SERVICE)

The Service maintains that this grievance is without merit. The Service relates that the grievant has been on limited duty for 19 years, working up to four hours per day, four days per week in the waste mail section when she had another injury on October 14, 2008. They maintain that an "Offer of Modified Assignment" was submitted to the grievant dated December 15, 2008, offering her what was essentially the same duty assignment she held at the time of her second injury.

However, the Service argues that the grievant failed to return this job offer until May 14, 2009, at which time the work contained in the job offer was no longer available due to a "tour compression", an elimination of work previously performed by clerks, the Service was required to find suitable work for these displaced clerks and did so by combining work from various positions, including work previously performed by the grievant.

The Service further maintains that they notified the grievant and the Union of these matters and in July, 2009, notified the grievant of her opportunities for vocational rehabilitation from the Office of Workmen's Compensation. The Service argues that to date, the grievant has failed to avail herself of any contact with OWCP, and therefore, the Service has fulfilled their responsibilities to the grievant.

DISCUSSION & AWARD

DISCUSSION:

The parties both argue their respective positions with passion and the belief that they alone are correct, and to a limited degree, they are both right. However, the Union has the burden of proving their case and the Service need only defend their actions as being contractually correct.

The Service argues that the Arbitrator lacks jurisdiction over any matters that would properly be before the Office of Workmen's Compensation. The Service provides this arbitrator with numerous arbitral decisions sustaining their argument. I am in agreement with this fact and have no intention of addressing any issues related to this matter that may have been, or could be, before the OWCP. However, I do find that issues before me, as presented by the Union, do fall within arbitral discretion.

Without simplifying the issues, this matter can best be viewed from the perspective of the "Issue" agreed upon by the parties, namely, "Did management violate Articles..... of the National Agreement when they failed to return the Grievant back to work...." There is no dispute that the grievant was provided a "job offer" dated December 15, 2008 after incurring an on-the-job injury October 14, 2008, and that she returned this offer signed May 14, 2009. (See J-2, Page 67 & 84/85)

Further, there is no apparent dispute that the grievant also provided medical clearance forms to the Service, including Form CA-20 dated May 15, 2009 (See J-2, Page 56 & 75), Form CA-20 dated May 15th/June 1, 2009 (See J-2, Page 53 & 54), PS Form 2499 dated May 11, 2009 (See J-2, Page 57 & 58), Doctor's Note dated June 1, 2009 (See J-2, Page 66), a Doctor's Note dated July 7, 2009 (See J-2, Page 64), a PS Form CA-20 dated July 10, 2009 (See J-2, Page 65).

The question then argued by the parties is whether the Service, having received medical clearance for the grievant's return, failed to return her to a duty status. The Service maintains that they made a viable job offer to the grievant in December, 2008. The offer was to perform, essentially, the same duties she had performed previously. However, the offer was not returned to the Service until May, 2009, at which time the duties contained in the offer were no longer available. The Service's witness, Manager Tom Sullivan testified creditably that due to the "tour compression", those duties were now being combined with other duties and performed by clerks who were impacted by the tour downsizing during the time period between the job offer and the grievant returning the offer. I find this explanation to be reasonable and consistent with the Service's responsibilities, during the period from October, 2008 to May, 2009.

However, it becomes a different matter after that time period.

The Union's witnesses, Mr. Arnaldo Vargas and Sylvin Stevens both testified that after being contacted by the grievant, they made numerous attempts to discuss the grievant's situation with the Service, particularly the Injury Compensation Office, with no success. They offered that they were told by Ms. Katharine Donahue that some of the reasons for the delay in returning the grievant were based on "confusion" over the paperwork submitted by the grievant and/or doctor. However, during her testimony, she acknowledged that such confusion could be something as simple as "handwriting". There is no doubt that the grievant was well known to the Injury Compensation office and both had communicated countless times in the past. Where I do find doubt, however, is in the Service's claims to have done all they could to find the grievant suitable work within her medical restrictions from the period May to August, 2009.

Article 19 of the National Agreement encompasses The Employee, Labor Relations Manual, Sections 545 & 546, which states in relevant part, Section 546.142, "Obligation", "When an employee has partially overcome the injury or disability, the Postal Service has the following obligation:
a. Current Employees. When an employee has partially overcome a compensable disability, the Postal Service must make every effort toward assigning the employee to limited duty consistent with the employee's medically defined work limitation tolerance." (Emphasis added)

I do not find that the Service faithfully fulfilled this obligation. While the Service made a job offer in December, 2008 to the grievant, from the record before me, it does not appear that they made any further attempt to return her to a duty status after being informed from her doctor that she was cleared to return with the same restrictions as previously held.

From the period May, 2009 to August, 2009, it is apparent that the Injury Compensation office failed to follow through with the grievant in any reasonable or obligatory manner.

The witness, Ms. Donahue was unable to articulate any specific efforts related to the grievant, but could only generalize what procedures her office usually employs.

The manager, who I am convinced accepted more responsibility for this matter than he was responsible for, offered conflicting written testimony regarding his attempts to resolve her return to work when he stated in Joint-2, Page 8, "The NALC was informed by me (Tom Sullivan) prior to the filing of this grievance and during meetings that were held with them." (Emphasis added) However, in his response to the Union's "Additions and Corrections" he further states, "I was not made aware of her "attempts" to return back to work until the filing of this grievance. Injury Compensation was not notified either and I had no conversations with any union official in May, June, July or August concerning this grievant." (Emphasis added) (See J-2, Page 91)

I find that the grievant, during the period May, 2009 through July, 2009, did provide the Service with suitable medical documentation, fulfilling her responsibilities, yet the evidence of record reflects that the Service offered one delay after another for returning her, relying only on the December, 2008 job offer as having been eliminated due to the "tour compression" and no evidence that they looked anywhere else. While the manager testified that he made numerous efforts to find her work in various locations, there is no record of where or when he made these efforts. It is reasonable to conclude that such an important aspect of this process would have been made part of the record. Further, in his remarks cited in J-2, Page 8, 1st paragraph, he cites only the job offer that was eliminated due to downsizing and no other efforts to find her suitable work. The Service argues that the Union has a responsibility to provide them with any possible duties the grievant may be able to perform and they failed to do so because there is not any work available. On the contrary, the obligation to "...must make every effort toward assigning the employee..." rests only with...", "...the Postal Service." For these reasons cited, I find that the Union has demonstrated a violation of Article 19 of the National Agreement.

AWARD

The grievance is sustained.

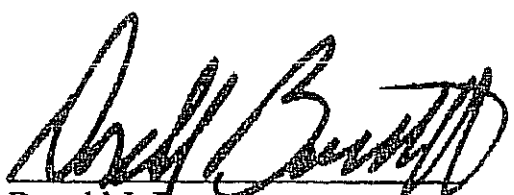
Based on the findings as stated above, the Service is ordered to make a renewed, thorough effort toward finding the grievant a limited duty assignment consistent with her medical restrictions. This shall be completed within 30 days from the date of this award. The Service is also instructed to undertake this effort in complete consultation with local union officials throughout.

In all respects, during this undertaking, be they successful or unsuccessful, the Postal Service shall adhere to all provisions of, including, but not limited to, the Employee & Labor Relations Manual, Handbooks & Manuals related to Injury Compensation, the laws and statues related to the Office of Workmen's Compensation and/or any other applicable provision of the National Agreement.

Whereas the grievant was previously compensated for any lost time cited in this grievance, I do not find reason to address this issue or the subject of retraining.

The Arbitrator shall retain jurisdiction in this matter for 60 days from the date of this award to resolve any issues resulting from its implementation.

Respectfully Submitted,



Donald J. Barrett
Arbitrator

Date Feb. 22, 2010