



American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

To: Local and State Presidents
Regional Coordinators
National Business Agents
National Advocates
Resident Officers

From: Greg Bell, Director 
Industrial Relations

Date: November 18, 2009

Re: Das Award on Article 12.5.C.5.a.(2) (Separation of All Casuals)

Enclosed you will find a recent National Association of Letter Carriers' (NALC) national arbitration award by Arbitrator Shyam Das regarding Article 12.5.C.5.a.(2). Arbitrator Das ruled that "[t]he provision in Article 12.5.C.5.a (2) for 'separation of all casuals' applies to casuals in the affected or losing craft, and not to casuals in other crafts." (*USPS # Q94N-4Q-C 99052344, 11/11/2009*)

This case arose after the NALC initiated a grievance regarding the meaning of the term "all casuals" in Article 12.5.C.5.a.(2) of the 1994-1998 National Agreement. The APWU intervened in this case since our contract contains the same provision. In addition, the National Postal Mail Handlers Union intervened for the same reason.

The unions argued that the language, purpose and structure of Article 12 require a conclusion that section 5.C.5.a.(2) refers to all casuals. We cited the fact that the language of Article 12 was originally drafted when all unions bargained for a single collective bargaining agreement which covered all career employees regardless of craft and also all casual employees regardless of craft. In addition, we contended that the provision at issue in this case doesn't make any reference to craft. The unions further referred to the primary principle for Sections 4 and 5 of Article 12 which requires "dislocation and inconvenience to employees in the regular work force shall be kept to a minimum." Consistent with this primary purpose, according to the unions, Section 5.C.5 of Article 12 establishes as a priority that an excessed employee should remain within their installation and a process to avoid reassigning regular employees outside their installation. One of the ways to ensure this end is to separate all casual employees regardless of craft. We also asserted that Section 4.D of Article 12, providing in part that "[i]n order to minimize the impact on employees in the regular work force, the Employer agrees to separate, to the extent possible, casual employees working in the *affected craft* and installation ..." [emphasis supplied], was intended to cover excessing situations for which there was no

contractual requirement that casuals be separated such as Sections 5.C.2 and Section 5.C.6. The unions maintained that such a provision was not meant to narrow the application of Section 5.C.5.a (2). In addition, we asserted that the specific provision in this case takes precedence over the general requirement in Article 12.4.D. Moreover, the unions argued that we have not conceded to management's interpretation that only casuals in the same craft are required to be separated, citing NALC and APWU regional grievances resulting in arbitration awards sustaining our position in this case.

Arbitrator Das indicated that though the language of Article 12.5.c.5.a.(2) "read in isolation, seems to support the Unions' position," the "context" as the Postal Service argues makes it "more logical to read the reference to 'all casuals' in 5.C.5.a (2) as covering all casuals in the affected craft ..." He accepted management's contention that the provision at issue "is part of a process" applied for reducing employees within an installation other than by attrition, which has as a first step determining "by craft the number of excess employees" followed by separation of all casuals. Das reasoned that "Section 5.C.5.a (2) is a step to be taken to reduce the number of regular employees to be excessed from the affected craft, not to create a full-time position in some other craft which – presumably after being bid in that craft – could provide a vacant position to be filled under Section 5.C.5.a.(4)." He also relied on testimony by the Postal Service's lead negotiator for reassignment issues in the 1973 negotiations that Section 4 (including Section 4.D relating to separation of casuals) was intended to "parallel the application of Section 5.C.5.a (2)" which had been included in previous agreements and also contained somewhat similar language to language in the 1994 National Agreement. Arbitrator Das stressed that given the context of bargaining for the 1973 Agreement, during which time there was significant excessing as a result of creation of bulk mail centers, "it seems unlikely that the Postal Service would have proposed, and the Unions agreed to, a more limited separation of casuals that that already provided for in Section 5.C.5.a (2)" Moreover, he determined that there wasn't sufficient evidence to show that Section 4.D was intended to provide protection in situations other than under Section 5.C.5.a.(2), such as those described in Sections 5.C.2 and 5.C.6 of Article 12.

Arbitrator Das also credited USPS witnesses' testimony that there was no objection by the unions to impact statements that showed planned reductions in casuals only in the affected crafts. In addition, he reasoned that regional awards sustaining the unions' position similar to the one in this case were not persuasive since the underlying grievances were decided on "more limited records" than in this case, remedies ordered were limited to reassigning the employees to the affected crafts, and they didn't contain findings that excessing could have been avoided by separating casuals in other crafts. Arbitrator Das further found persuasive management's argument that given layoff and reduction in force provisions in Article 6, which "call for separation of all casuals within the craft to the extent possible," it was unlikely that the parties would have provided more protection in excessing situations relating to separation of casuals.

Attachment

National Arbitration Panel

In the Matter of Arbitration)
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 between)
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 United States Postal Service)
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 and)
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 National Association of) Case No.
 Letter Carriers) Q94N-4Q-C 99052344
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 and)
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 American Postal Workers)
 Union - Intervenor)
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 and)
)
 National Postal Mail Handlers)
 Union - Intervenor)

Before: Shyam Das

Appearances:

For the Postal Service: Lynn D. Poole, Esq.
For the NALC: Keith E. Secular, Esq.
For the APWU: Melinda K. Holmes, Esq.
For the NPMHU: Bruce R. Lerner, Esq.

Place of Hearing: Washington, D.C.

Dates of Hearing: January 14, 2009
February 6, 2009

Date of Award: November 11, 2009
Relevant Contract Provision: Articles 3 and 12
Contract Year: 1994-1998
Type of Grievance: Contract Interpretation

Award Summary

The provision in Article 12.5.C.5.a(2) for "separation of all casuals" applies to casuals in the affected or losing craft, and not to casuals in other crafts.



Shyam Das, Arbitrator

At issue in this case is the meaning of the term "all casuals" in Article 12.5.C.5.a(2) of the 1994-1998 National Agreement between the Postal Service and the National Association of Letter Carriers. The National Agreements of the American Postal Workers Union and the National Postal Mail Handlers Union contain the same contractual provision, and both of those Unions have intervened in this national arbitration proceeding.¹

Sections 4 and 5 of Article 12 contain extensive provisions relating to the involuntary reassignment of employees for operational reasons. Relevant to this dispute are the following provisions:

Section 4. Principles of Reassignments

A. A primary principle in effecting reassignments will be that dislocation and inconvenience to employees in the regular work force shall be kept to a minimum, consistent with the needs of the service. Reassignments will be made in accordance with this Section and the provisions of Section 5 below.

B. When a major relocation of employees is planned in major metropolitan areas or due to the implementation of national postal mail networks, the Employer will apply this Article in the development of the relocation and reassignment plan. At least 90 days in

¹ Unless otherwise stated, all further contractual references are to provisions of the 1994-1998 National Agreement between the Postal Service and the NALC, which was in effect when this grievance was initiated. Identical provisions are included in the APWU and NPMHU National Agreements.

advance of implementation of such plan, the Employer will meet with the Unions at the national level to fully advise the Unions how it intends to implement the plan. If the Unions believes such plan violates the National Agreement, the matter may be grieved.

Such plan shall include a meeting at the regional level in advance (as much as six months whenever possible) of the reassignments anticipated. The Employer will advise the Unions, based on the best estimates available at the time, of the anticipated impact; the numbers of employees affected by craft; the locations to which they will be reassigned; and, in the case of a new installation, the anticipated complement by hour and craft. The Unions will be periodically updated by the Region should any of the information change due to more current data being available.

C. When employees are excessed out of their installation, the Union at the national level may request a comparative work hour report of the losing installation 60 days after the excessing of such employees.

If a review of the report does not substantiate that business conditions warranted the action taken, such employees shall have their retreat rights activated. If the retreat right is denied, the employees have the right to the grievance-arbitration procedure.

D. In order to minimize the impact on employees in the regular work force, the Employer agrees to separate, to the extent possible, casual employees working in the affected craft and installation prior to excessing any regular employee in that craft

out of the installation. The junior full-time employee who is being excessed has the option of reverting to part-time flexible status in his/her craft, or of being reassigned to the gaining installation.

Section 5. Reassignments

A. Basic Principles and Reassignments

When it is proposed to:

1. Discontinue an independent installation;
2. Consolidate an independent installation (i.e., discontinue the independent identity of an installation by making it part of another and continuing independent installation);
3. Transfer a classified station or classified branch to the jurisdiction of another installation or make an independent installation;
4. Reassign within an installation employees excess to the needs of a section of that installation;
5. Reduce the number of regular work force employees of an installation other than by attrition;
6. Centralized mail processing and/or delivery installation (Clerk Craft only);
7. Reassignment -- motor vehicles;
8. Reassignment -- part-time flexibles in excess of quota; such actions

shall be subject to the following principles and requirements.

B. Principles and Requirements

1. Dislocation and inconvenience to full-time and part-time flexible employees shall be kept to the minimum consistent with the needs of the service.

* * *

C. Special Provisions on Reassignments

In addition to the general principles and requirements above specified, the following specific provisions are applicable:

* * *

5. Reduction in the Number of Employees in an Installation Other Than by Attrition

- a. Reassignments within installation. When for any reason an installation must reduce the number of employees more rapidly than is possible by normal attrition, that installation:

- (1) Shall determine by craft and occupational group the number of excess employees;

- (2) Shall, to the extent possible, minimize the impact on regular work force employees by separation of all casuals;

- (3) Shall, to the extent possible, minimize the impact on full-time positions by reducing part-time flexible hours;
- (4) Shall identify as excess the necessary number of junior full-time employees in the salary level, craft, and occupational group affected on an installation-wide basis within the installation; make reassignments of excess full-time employees who meet the minimum qualifications for vacant assignments in other crafts in the same installation; involuntarily reassign them (except as provided for letter carriers and special delivery messengers and vehicle service employees in Section C.5.b below) in the same or lower level with seniority, whichever is the lesser of:
- (a) One day junior to the seniority of the junior full-time employee in the same level and craft or occupational group in the installation to which assigned, or
- (b) The seniority the employee had in the craft from which reassigned. The 5-year rule does not apply.

* * *

b. Reassignments to other installations after making reassignments within the installation:

- (1) Involuntarily reassign such excess full-time employees starting with the junior with their seniority for duty assignments to vacancies in the same or lower level in the same craft or occupational group in installations within 100 miles of the losing installation, or in more distant installations if after consultation with the affected Union it is determined that it is necessary, the Postal Service will designate such installations for the reassignment of excess full-time employees....

(Emphasis added.)

As provided above, when an installation must reduce the number of employees more rapidly than is possible by normal attrition, Article 12.5.C.5.a(2) requires that the installation:

Shall, to the extent possible, minimize the impact on regular work force employees by separation of all casuals.

(Emphasis added.)

The present grievance originally included a dispute as to the meaning of the words "to the extent possible" in this provision. That dispute was resolved in a national arbitration case involving an APWU grievance, in which the NALC intervened -- Case No. HOC-NA-C 12 (Snow 2001). In that case, the parties agreed the language of Article 12.5.C.5.a(2) means:

All casuals must be removed if it will eliminate the impact on regular workforce employees. The Employer must eliminate all casual employees to the extent that it will minimize the impact on the regular workforce.²

The remaining dispute is whether the words "all casuals" means all casuals regardless of craft or Union, as the Unions maintain, or all casuals in the affected (or losing) craft, as the Postal Service contends.

The reassignment provisions in Section 5 of Article 12 originated in Article XII of the original collective bargaining agreements between the Post Office Department and the then existing postal Unions in the 1960s. The reassignment provisions in Article XII were set forth in two Sections. Section 1 covered all crafts except the clerk craft, which was covered by Section 2. Both Sections 1 and 2 included the same provision on separation of casuals in Paragraph C.5.a(2). This

² In his decision, Arbitrator Snow also stated: "The parties agreed that the Employer was only obligated to separate casual workers if doing so would yield sufficient hours for a regular workforce clerk, that is, eight hours within nine or ten hours, five days a week."

provision, as set forth in Article XII of the 1968-1970 Agreement -- the fourth such agreement -- stated that the installation:

Shall, to the extent possible, minimize the impact on career employees by separation of all temporaries; postal assistants, seasonal assistants, etc;

In 1971, following the Postal Reorganization Act, the Postal Service and the postal Unions agreed to a National Working Agreement. As part of this 1971-1973 Agreement, the parties agreed to adopt or carry forward a number of prior regulations and provisions of the 1968 Agreement without substantive change, including Article XII governing reassignments. The NALC and APWU each printed their own version of the 1971 Agreement, which included the language of Article XII of the 1968 Agreement, with some modifications. The applicable provision in the NALC and APWU printed versions read as follows:

Shall, to the extent possible, minimize the impact on full-time regular or part-time flexible employees by separation of all casuals, postal assistants, employees doing bargaining unit work and not in one of the bargaining units, etc.³

There was no agreement by the Postal Service to this particular wording of this provision.

³ In the 1971 Agreement, casuals replaced temporaries.

In 1973, the Postal Service and the then four national Unions agreed to a collective bargaining agreement and jointly agreed to a printed version of that 1973-1975 Agreement. The 1973 Agreement contained an Appendix A whose preamble states:

Appendix A is an incorporation of the principles of Reassignments as contained in Article XII of the March 9, 1968, National Agreement. The old Article XII has been edited to conform with the new employee classifications. In addition, other word changes have been incorporated to bring Article XII up to date with present terminology; however, there have been no substantive changes.

The applicable provision in Appendix A of the 1973 Agreement states that the installation:

Shall, to the extent possible, minimize the impact on regular work force employees by separation of all casuals, postal assistants, seasonal assistants, etc.;

Article XII of the 1973 Agreement also included an entirely new Section 4 entitled: "Principles of Reassignments." Appendix A and Section 4 of Article XII of the 1973 Agreement were carried forward -- with some modifications not relevant here -- in the 1975-1978 Agreement.

In the 1978-1981 Agreement, the parties eliminated Appendix A and incorporated its provisions as Section 5 of

Article XII.⁴ The applicable provision in Section 5.C.5.a(2) eliminated the reference to "postal assistants, seasonal assistants, etc.," and reads exactly as it does in the 1994 Agreement at issue in this case.

The Postal Service presented as a witness Brian Gillespie, who retired from postal management in 2005. Gillespie testified that he was hired as a management intern in the Post Office Department in 1966. In 1969 he became a Labor Relations Specialist at headquarters, a position he continued in after Postal Reorganization in 1971. He developed expertise in seniority, posting and reassignment.

Gillespie testified that based on discussions with his superiors he understood that the reference to separation of "all temporaries..." in the applicable provision in Article XII of the 1968 Agreement was to all temporaries in the affected or losing craft. Gillespie stated that this was consistent with the manner in which the provisions relating to Reduction in the Number of Employees in an Installation Other Than by Attrition -- now in Article 12.5.C.5 -- were and are applied: management calculates the reduction in a particular craft in terms of work hours and applies 12.5.C.5.a(1) through (3) to determine the number of positions that are to be excessed from that craft, Article 12.5.C.5.a(4) then is applied to reassign the excess employees into vacant positions in other crafts, which typically

⁴ The 1978 Agreement also eliminated Sections 1 and 2, ending the separation of the clerk craft reassignment provisions from the provisions covering all other crafts.

have been withheld in anticipation of such excessing and temporarily filled by casual employees or expanded PTF hours.

Gillespie was the Postal Service's lead negotiator on reassignment issues in the 1973 negotiations. He explained that the Postal Service had embarked on a major initiative to create Bulk Mail Centers, which would result in significant reassignments within installations and to other installations, including the new BMCs. The Unions, he stated, raised concerns regarding their role in the planning process at the national level and as to whether some excessing might actually turn out to have been unnecessary. The Unions also proposed some changes to the existing reassignment provisions in Appendix A, including eliminating the phrase "to the extent possible" from the provision in issue relating to separation of casuals. Gillespie stated that the Postal Service would not agree to the Union's proposal, but he developed a concept paper to try to alleviate the Union's concerns. Gillespie said the substance of his concept paper ultimately was incorporated as the new Section 4 (Principles of Reassignment) in Article XII of the 1973 Agreement. Gillespie stated that the Postal Service told the Unions that these new provisions would overarch the existing reassignment provisions in Appendix A that had been carried over from the 1968 Agreement.

Included in Article XII, Section 4 of the 1973 Agreement was the provision now set forth in Article 12.4.D, which states:

In order to minimize the impact on employees in the regular work force, the Employer agrees to separate, to the extent possible, casual employees working in the affected craft and installation prior to excessing any regular employee in that craft out of the installation....

(Emphasis added.)

Referring to the corresponding provision relating to separation of casuals in Paragraph C.5.a(2) of Sections 1 and 2 of Appendix A, which predated Postal Reorganization, Gillespie testified:

...that language had been interpreted and applied to be all of the temporaries or their successors, casuals, in the affected craft in that installation. That was the same language that we gave the Unions, the same concept in the concept paper, and it spoke to when we are excessing outside the facility to separate casuals in the affected craft, to the extent possible in the affected craft and installation.

Gillespie testified that most of the BMC reassignments occurred between 1973 and 1976. In accordance with Section 4 of Article XII, the Postal Service met with the Unions and provided its reassignment plans. Those plans, he said, specified only the separation of casuals in the affected craft. The Unions, he stated, did not object or claim that all casuals, not just those in the same craft, had to be separated pursuant to the provision in Appendix A now found in Article 12.5.C.5.a(2).

The APWU introduced as an exhibit a set of Regional Instructions on the reassignment of excess craft employees

issued by postal headquarters in November 1975. This document refers to the contractual requirement to separate casual employees and reduce PTF hours, to the extent possible. The APWU stresses that this document does not state any limitation on which casuals are to be separated. Gillespie testified that he drafted this document, and that the reference to reducing casuals was to casuals in the affected craft, based on the provisions then found in Appendix A.

The Postal Service introduced as exhibits two letters sent to the Mail Handlers Union at the national level. In the first, dated December 1976, Assistant Postmaster General Gildea in Labor Relations responded to an inquiry from that Union regarding the use of the term "casual" in, for example, Section 1, Paragraph C.5.a(2) of Appendix A. Gildea stated the Postal Service's opinion that the provisions in Paragraph C.5 of Appendix A and Article XII, Paragraph D (presumably a reference to Section 4.D)

...must be read, and applied, as a whole, in determining how the employee complement will be reduced. In our opinion, these provisions provide that the procedures for reducing the number of employees within an installation will be applied on a craft by craft basis....

The second letter, dated September 1977, is a fourth step grievance response by General Manager Merrill in Labor Relations, which states:

It is our position that the term "all casuals" as the term is written in Section 1, Paragraph C.5.a(2) of Appendix A does not infer that casuals of all crafts "to the extent possible," must be separated prior to excessing employees from a particular craft.

The procedures outlined in Section 1, Paragraph C.5.a must be read and applied as a whole in determining how the employee complement will be reduced. In our opinion, these provisions provide that the procedures for reducing the number of employees within an installation are to be applied on a craft-by-craft basis.

The Postal Service also presented testimony from two witnesses, Managers Robert Brenker and Michael Mlarker, in support of its contention that historically, in applying the reassignment provisions in Article 12.5.C.5.a, the Postal Service, in determining the number of employees who must be excessed, minimizes the impact on the regular workforce by separating casuals in the affected craft. Similarly, it reduces PTF hours in the affected craft, pursuant to subparagraph (3) of that provision. It also reduces overtime and transitional employees in the affected craft. These witnesses noted that impact statements provided to the affected Unions pursuant to Section 4 of Article 12 showed the planned reduction of casuals only in the affected crafts.

The APWU submitted into evidence several management documents to show that the parties understood the language of Article 12.5.C.5.a(2) to encompass all casuals regardless of craft. The earliest of these documents is a summary of the various requirements of Article 12 issued to the field by James

Holmes, Regional Director of Human Resources for the Central Region, in March 1988. This document includes the following statement:

- e. Prior to reassigning full time employees, it is necessary to minimize the impact on the regular work force employees by separating all casual employees, regardless of designation/activity code, to the extent possible. (Ref: Article 12, Section 5.C.5.a.2.)⁵

The other documents, all of which appear to duplicate the text in the Holmes document, consist of: (i) a booklet, evidently distributed in 1989, consisting of guidelines for Article 12 which states that it was jointly developed by Central Region Labor Relations staff and Central Region APWU officials; (ii) an undated Central Region Computer Program on Article 12 which states that the APWU, NALC and NPMHU all participated in its formation; and (iii) an undated document, evidently prepared by Labor Relations in the Eastern Region, which APWU witness Greg Bell testified was in his possession while he was President of the Philadelphia Local from 1986 to 1995, although it never had to be applied.

Postal Service witness Mlarker testified that he reported directly to Central Region Director Holmes when Mlarker served as Regional Complement Coordinator for the Central Region

⁵ This document further states:

- f. Reduce part-time flexible hours to the extent possible regardless of craft designation. (Ref: Article 12, Section 5.C.5.a.3)

from 1990 to 1997. He insisted that during that period they did not apply Article 12.5.C.5.a(2) in the manner described in the 1988 Holmes document, but only separated casualls in the affected craft when applying that provision. He further stated that Holmes never told him to follow the 1988 Holmes document, nor did the Unions ever cite it.

In 1991, Labor Relations at headquarters issued an Article 12 Reference and Training Guide, which states, with respect to Article 12.5.C.5.a(2):

a(2) This requires management to minimize the impact on the regular workforce by separating casualls to the maximum extent possible. This provision does not require the automatic separation of all casualls prior to reassigning an excess employee across craft lines. It does require us to minimize the impact as much as possible, but there may be occasions when we will not be able to do so.

(Emphasis in original.)

Postal Service witness Brenker testified that he put this document together and that he was referring only to casualls in the affected craft, and that is how he has explained it in training sessions.

Phillip Hart, Director of City Delivery at the NALC, testified that he dealt with Article 12 issues when he served as an NALC representative in the Western Region and, later, the Pacific Area. He said he never got into disputes over Article 12.5.C.5.a(2), but that as a trainer of stewards and branch

officers, he taught that the reference to "all casuals" applied to casuals in all crafts at the installation.

UNION POSITION

The Unions contend that the language, purpose and structure of Article 12 compel the conclusion that Section 5.C.5.a(2) refers to all casuals. Indeed, the Unions argue, no other construction is compatible with the literal language at issue. This language was originally drafted, prior to Postal Reorganization, in the context of a single national collective bargaining agreement to which all Unions were parties. Article XII of that agreement covered all career employees regardless of craft, and all casuals, regardless of craft (then temporaries). The pertinent language states that the obligation to separate casuals is triggered when "for any reason an installation must reduce the number of employees" in the installation, without reference to craft. Paragraph 5.a(2), in turn, requires "that installation" to "minimize the impact on regular work force employees" without reference to craft. And the language requiring the "separation of all casuals" makes no reference to craft.

The Unions assert that separating a casual to allow an excess letter carrier to continue working in the same installation in the clerk craft reflects the precise language of Article 12.5.C.5.a(2). It ensures that the "impact on regular workforce employees" is "minimized" by reducing to the absolute minimum the reduction in total number of regular workforce employees at that installation that otherwise would be required.

The Unions reject the interpretation of the relevant language provided by Postal Service witness Gillespie. Essentially, Gillespie argued that the provision in issue should be read as one in a series of steps to be taken by management before any employees are reassigned within the installation across craft lines. This approach effectively interprets "minimizing the impact on regular workforce employees" as really meaning "minimizing the number of employees within each craft who must be reassigned outside the craft." But that is not what the contract says. In the Unions' view, Gillespie's argument is no mere interpretive gloss; it is a complete rewriting of the language.

The Unions cite a half dozen regional arbitration awards, mostly APWU cases, all of which support their interpretation of Article 12.5.C.5.a(2).

The Unions stress that the explicit primary principle of the reassignment principles and procedures in Sections 4 and 5 of Article 12 is "that dislocation and inconvenience to employees in the regular work force shall be kept to a minimum." Consistent with this primary purpose, Section 5.C.5 establishes that the first priority is to keep an excessed employee within their installation, by providing a multi-step process to avoid reassigning a regular employee out of their installation. First, to minimize the impact on regular employees the Postal Service must separate all casuals. Then it must reduce PTF hours. Then, in order to keep the excessed employee in their installation, the Postal Service must reassign this employee to

vacant assignments in other crafts in the same installation. Only after all of these steps are exhausted, can the Postal Service reassign a regular employee out of their installation.

The contractual imperative to avoid dislocation to regular employees, the Unions assert, reflects the significant impact of reassigning a regular employee to a different installation. An employee may be reassigned to installations within 100 miles of the losing installation or to more distant installations. Such an employee would have to sell their house, purchase another house and relocate their family. Or, in the alternative, the employee would have to commute hundreds of miles a day, incurring large driving expenses. The Unions note that the Postal Service does not reimburse dislocated employees for many expenses associated with moving, including losses in buying or selling real estate.

The Unions point out that their interpretation would require the Postal Service to separate a casual regardless of the craft in those situations where the separation would create an opportunity for the career employee to remain in their home installation. The Postal Service's position, by contrast, would necessitate the transfer of the career employee for the sole purpose of retaining the casual. Such a result clearly is inconsistent with the fundamental purpose of Article 12.

The Unions maintain that management's reliance on Section 4.D of Article 12 is unavailing. There is no basis for the suggestion that 4.D narrows the application of Section 5.C.5.a(2). More likely, the Unions assert, is that this

provision was designed to cover various excessing situations for which there had been no contractual requirement that casuals first be separated, such as those covered by Section 5.C.2 and Section 5.C.6. The Unions emphasize that Section 4.D sets forth general principles for reassignment. Section 5.C presents special provisions on reassignments that are to be applied in addition to the general principles. The specific requirement in Article 12.5.C.5.a(2) takes precedence over the more general Article 12.4.D requirement. If anything, the language of Section 4.D establishes that the parties knew how to craft language limiting the separation of casuals by craft. Yet, no such language appears in Section 12.5.C.5.a(2).

The Unions argue that Postal Service witness Gillespie's testimony that there was an understanding in the 1960s that the relevant provision only required the separation of casuals in the craft of the affected regular employee should be given little weight. His testimony was based solely on hearsay conversations, and there is no evidence that the asserted internal management understanding was shared with, let alone accepted by, any Union officials. Indeed, the Unions' printed versions of the 1971 Agreement persuasively undercut any argument that they accepted Gillespie's interpretation. Those printed versions expressly called for separation of all casuals "not in one of the bargaining units."

The Unions also point out that the claim by management that the Unions historically have acquiesced in its view that only casuals in the same craft are to be separated is belied by the various regional arbitration awards sustaining grievances

filed by the NALC and APWU to the contrary. In addition, the record indicates that over the past 20 years there have been very few instances in which letter carriers have been excessed at all and rarely from offices where casuals were employed. Thus any occasions on which the interpretive issue raised here could have arisen would have been extremely rare.

Accordingly, the Unions maintain, there is no basis for any argument that there has been a mutually agreed practice of limiting the separation of casuals along craft lines in the letter carrier craft, and testimony by APWU witness Greg Bell established that the separation of casuals historically has been a matter of dispute between the Postal Service and the APWU. Furthermore, the record shows there has not been a consensus as to the meaning of Article 12.5.C.5.a(2) within postal management.

The Unions point out that reassigning an excessed regular carrier to a temporary position created by separation of a clerk casual can be part of a strategy to minimize dislocation to that carrier. For example, if the Postal Service plans to excess a regular carrier to an installation 100 miles away, but the carrier's installation employs a casual in the clerk craft for eight hours a day on a temporary basis and another letter carrier is scheduled to retire in 45 days, the installation can separate the casual and allow the carrier to remain in his or home installation until a regular position is available. Alternatively, allowing the carrier to work temporarily in the casual clerk assignment may allow time for a vacancy to open in another installation much closer to the carrier's home. In each

of these situations, separating the casual minimizes the impact of the assignment on the excessed carrier.

The Unions also note that at the time this grievance arose the Postal Service was employing casuals on an ongoing basis in lieu of regular employees. In that historical context, there have been numerous opportunities to provide employment to career employees who otherwise would be excessed by separating casuals.

The Unions disagree with the suggestion by the Postal Service that separating all casuals regardless of craft will create delays caused by the posting and bidding process. They point out that the fact that the reassigned employee is from another craft does not increase whatever difficulties may arise in the bidding process following the separation of a casual.

EMPLOYER POSITION

The Postal Service contends that its interpretation of Article 12.5.C.5.a(2) better comports with the language of the collective bargaining agreement. Subsection a(1), which introduces the remaining subsections under 12.C.5.C.a, requires the Postal Service to determine the number of excessed employees "by craft." It is more logical to assume that the purpose for the following subsections, a(2) relating to casuals, and a(3) relating to PTF employees, also are discussing issues involving the same craft. After all, the ultimate aim of sub-parts 12.5.C.5.a(1)-(4) is to determine how to place that craft's excessed employees. Therefore, the absence of any qualifying

language in a(2) stating that it applies only in the losing or affected craft carries no particular weight.

The Postal Service also rejects the Unions' effort to contrast the lack of reference to the losing or affected craft in 12.5.C.5.a(2) with the reference in what is now Article 12.4.D to separation of casuals in the affected craft. The language in 12.4.D, as testified to by Postal Service witness Gillespie, was borrowed from the way in which 12.5.C.5.a(2) always had been applied over the years. In response to the Unions' concern that assignments outside the installation would adversely affect their members as a result of the development of the bulk mail network, the Postal Service agreed to a new provision (Section 4) covering such reassignments and wrote in the protection already used in 12.5.C.5.a(2) for reassignments within the installation. The purpose, the Postal Service insists, was to treat the two situations the same.

The Postal Service also points out another anomaly in the Unions' position. Article 6.B.4 of the contract relating to layoff and reductions in force, provides that before layoff and reductions in force occur within an installation the Postal Service will to the fullest extent possible separate all casuals within the craft, but not casuals in every craft. The Postal Service contends that it is not likely that the parties in the same collective bargaining agreement intended to provide more protection for regular employees within the installation in reassignments under 12.5.C.5.a(2) than under layoff and reductions in force covered by Article 6.B.4.

The Postal Service stresses that its interpretation of Article 12.5.C.5.a(2) is consistent with how that subparagraph has been applied and viewed by the parties. In addition to the testimony of Postal Service witnesses Brenker and Mlarker, the Postal Service points to two documents jointly issued at the national level by top Postal Service and APWU representatives regarding the application of Article 12. The Postal Service argues these documents confirm that the separation of casuals under Article 12.5.C.5.a(2) applies only to casuals in the affected craft. The Postal Service maintains that the documents cited by the Unions, including the Holmes document, did not and do not reflect national postal policy and do not correspond to the manner in which the applicable provision has been applied over the years.

The Postal Service also argues that the Unions' interpretation of 12.5.C.5.a(2) leads to a variety of operational and contractual absurdities. It points to testimony of Postal Service witness Brenker regarding the untoward consequences that would follow from adopting the Unions' interpretation, including delays caused by the need to first bid any position created by separating casuals in another craft in that craft.

Finally, the Postal Service insists that the regional arbitration awards cited by the Unions fail to support their position in this case. Notably, the arbitrators in those cases did not have the factual evidence that has been presented by the Postal Service in this arbitration.

FINDINGS

This case poses a difficult interpretive issue. On its face, the wording of Article 12.5.C.5.a(2), read in isolation, seems to support the Unions' position. It refers to "all casuals" without limitation. This is in contrast to Article 12.4.D, which specifically refers to: "casual employees working in the affected craft." Moreover, the Unions have cited several management documents, albeit from regional or area managers, that appear to agree with their position. At least six regional arbitrators, based largely on these factors, have concluded that "all casuals" means just that, without regard to craft or Union. Yet, the Postal Service in this national arbitration proceeding has presented a much fuller and more nuanced position than it did in those cases, which, ultimately, is more compelling than that of the Unions.

Context is important. The parties have expressly stated in Article 12.4.A that: "A primary principle in effecting reassignments will be that dislocation and inconvenience to employees in the regular work force shall be kept to a minimum, consistent with the needs of the service." That provision goes on to provide that: "Reassignments will be made in accordance with this Section and the provisions of Section 5 below." Section 4.D, as noted above, specifically provides for separation of casuals working in the affected craft and installation, to the extent possible, prior to excessing any regular employee in that craft out of the installation. Section 4 was added to the Agreement in 1973. Section 5 -- then Appendix A -- dates back at least to 1968 prior to Postal

Reorganization. Section 4 overlays the provisions of Section 5 which remain virtually unchanged from 1968.

Article 12.5.C.5.a(2), the provision in issue, is part of a process to be applied when it is necessary to reduce the number of employees in an installation other than by attrition. The initial part of this process, set forth in Section 5.C.5.a, covers reassignments within an installation. The first step is to determine by craft the number of excess employees. The second step -- the provision in issue -- is to minimize the impact on regular work force employees "by separation of all casuals." The third step is to minimize the impact on full-time positions by reducing PTF hours. The fourth step is to identify as excess the necessary number of junior full-time employees in the affected craft in the installation, and then seek to reassign them to vacant assignments in other crafts in that location. Section 5.C.5.b then goes on to provide for reassignments to other installations when necessary.

This procedure calls for separation of all casuals and reduction in PTF hours after determining the number of excess employees in a particular craft and prior to identifying those employees who must be excessed from that craft. In that context, as the Postal Service argues, it is more logical to read the reference to "all casuals" in Section 5.C.5.a(2) as covering all casuals in the affected craft because these initial steps are designed to identify who must be excessed from that craft to achieve the necessary reduction in that craft. Only after that occurs are employees reassigned to vacant positions in other crafts in the same installation, where possible. In

other words, the separation of "all casuals" provided for in Section 5.C.5.a(2) is a step to be taken to reduce the number of regular employees to be excessed from the affected craft, not to create a full-time position in some other craft which -- presumably after being bid in that craft -- could provide a vacant position to be filled under Section 5.C.5.a(4).

Postal Service witness Gillespie, who was the lead negotiator for reassignment issues in 1973 negotiations, testified that when Section 4 was added to the National Agreement in 1973, the provision in Section 4-D relating to the separation of casuals -- which he said was based on his position paper -- was designed to parallel the application of Section 5.C.5.a(2), set forth in Appendix A of the 1973 Agreement. In the context of alleviating the Unions' concerns at that time regarding significant excessing as a result of the creation of bulk mail centers, it seems unlikely that the Postal Service would have proposed, and the Unions agreed to, a more limited separation of casuals than that already provided for in Section 5.C.5.a(2), which remained intact in Appendix A.⁶ There is no support in this record for the Unions' alternative suggestion that Section 4-D more likely was intended to provide some, but more limited, protection in other situations not covered by Section 5.C.5, such as those described in Sections 5.C.2 and 5.C.6.

⁶ Standing alone, the wording of Paragraph C.5.a(2) included in the NALC and APWU versions of the 1971 Agreement, which was not agreed to by the Postal Service, does not clearly indicate, as the Unions now argue, that in 1971 they read that provision of the 1968 Agreement as applying to casuals in other than the affected craft.

As for actual practice, this issue of separation of casuals in other crafts appears to have been essentially theoretical. There is no evidence of any situation in which Section 5.C.5.a(2) actually was applied to separate casuals in a different craft. There also is no evidence of any specific situation when such a separation actually would have made it possible to avoid excessing an employee in another craft, consistent with the 2001 Snow Award regarding the meaning of "to the extent possible."

Postal Service witnesses testified that in providing impact statements pursuant to Article 12.4.B, the Postal Service showed planned reductions of casuals only in the affected crafts, and that there was no objection by the Unions. The Unions, however, have cited a number of management documents, most notably the 1988 Holmes document, that appear to support their position. The Postal Service, in turn, presented testimony that the Holmes document was not even followed in the Central Region where it originated. Perhaps more significantly, the Postal Service rightly contends that, as a regional official, Holmes did not speak for the Postal Service at the national level, and it presented two national level communications to the Mail Handlers in the 1970s which clearly set forth the Postal Service's position that Section 5.C.5.a(2) applies only in the affected craft.

The Unions have introduced six regional arbitration cases, all postdating the 1988 Holmes document, in which the Unions successfully grieved the Postal Service's failure when

applying Article 12.5.C.5 to consider separating casuals in other crafts. Those cases, most of which involved excessed employees in the Special Delivery Messenger craft, upheld grievances alleging a violation of Section 5.C.5.a(2) -- and in some cases a(3) -- because management did not consider separating casuals (or reducing PTF hours) in other than the affected craft. As previously noted, those regional cases were decided on the basis of considerably more limited records than that in this national case. Notably, the remedy in most of those cases was to rescind the excessing and to reassign the grievant(s) to the affected or losing craft, where, of course, they were not needed. What happened after that is not specified in this record. None of the decisions actually found that excessing could have been avoided by separating casuals (and/or reducing PTF hours) in other crafts, consistent with the Snow Award regarding the meaning of "to the extent possible." Arbitrator James Odom, in the most recent of these cases -- USPS and APWU Case H00C-1H-C 03128563 (2004) -- ordered an additional hearing to receive evidence on that score. But the present record does not indicate whether such a hearing was held, and, if so, what decision was rendered.

As the Postal Service points out, it also seems unlikely that the parties would have intended to provide more protection with respect to separation of casuals for regular employees within the installation in reassignments under Article 12.5.C.5.a(2) than under the provisions in Article 6.B.4 relating to reassignment, layoff and reduction in force, which call for separation of all casuals within the craft to the fullest extent possible.

While obviously not binding on the NALC, the May 18, 2005 Article 12 Questions and Answers document jointly issued by top Postal Service and APWU officers seem to offer some support to the Postal Service's interpretation of Article 12.5.C.5.a(2). It states:

Q6. Is the Postal Service required to minimize impact on regular work force employees prior to excessing?

A6. Yes. In order to minimize the impact on employees, to the extent possible, all casuals working in the affected craft and installation will be separated prior to making involuntary reassignments. Also, to the extent possible, part-time flexible employee work hours will be reduced. There is an obligation to separate casual workers if doing so would yield sufficient hours to establish a regular full time duty assignment; that is eight hours within nine or ten hours, the same five days during a service week.

Greg Bell, the APWU's Director of Industrial Relations, testified that this Q&A #6 deals with Article 12.4.D and does not address Article 12.5.C.5.a(2), but, as the Postal Service points out, reducing PTF hours -- referred to in this Q&A -- is provided for only in Article 12.5.C.5.a and not in Article 12.4.D.

Bell also explained that Q&A #6 tracks language in the 2004 Joint Contract Interpretation Manual issued by the APWU and the Postal Service relating to Minimizing Impact, which then was

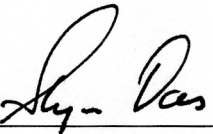
in effect. That 2004 JCIM provision is set forth under the heading "Article 12.5.B.5," which really does not fit, because that contractual provision addresses advance notice and relocation expenses relating to involuntary reassignments outside an installation. More recent APWU JCIM editions include this provision under the heading "Article 12.5.B," which provides "Principles and Requirements" for reassignments, and precedes Section 5.C which provides additional Special Provisions on Reassignments, including the provision in issue. The APWU is correct, however, in pointing out that the provisions in the JCIM under the heading "Article 12.5.C.5.a" make no reference to separation of casuals, which Bell stated was because of the present interpretive dispute.⁷

Under all these circumstances, I conclude that the Postal Service's position in this interpretive dispute is sounder and more compelling than that of the Unions.

⁷ I did not find an indication in the record as to when the APWU filed its pending grievance on the meaning of "all casuals" in Article 12.5.C.5.a(2). That issue is not addressed in Arbitrator Snow's 2001 Award, in an APWU case, on the meaning of "to the extent possible."

AWARD

The provision in Article 12.5.C.5.a(2) for "separation of all casuals" applies to casuals in the affected or losing craft, and not to casuals in other crafts.



Shyam Das, Arbitrator