

**American Postal Workers Union, AFL-CIO**

1300 L Street, NW, Washington, DC 20005

**Appeal to Arbitration, National Dispute**

August 13, 2008

Greg Bell, Director  
Industrial Relations  
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VIA FACSIMILE AND FIRST CLASS MAIL

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Mr. Doug Tulino  
Vice President, Labor Relations  
U.S. Postal Service, Room 9014  
475 L'Enfant Plaza  
Washington, D.C. 20260

Re: USPS Dispute No. Q00C4QC05073933, APWU No. HQTG20055,  
Separation of Casual Employees Pursuant to Article 12.5.C.5.a

Dear Mr. Tulino:

Please be advised that pursuant to Article 15, Sections 2 and 4, of the Collective Bargaining Agreement, the APWU is appealing the above referenced dispute to arbitration.

Sincerely,

*Greg Bell*  
Greg Bell, Director  
Industrial Relations

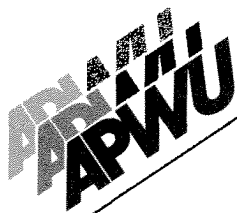
USPS #: Q00C4QC05073933  
APWU #: HQTG20055

Case Officer: Greg Bell  
Step 4 Appeal Date: 3/21/2005  
Contract Article(s): 12, Separation of Casuals;

cc: Resident Officers  
Industrial Relations

File

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## American Postal Workers Union, AFL-CIO

1300 L Street, NW, Washington, DC 20005

### Article 15 -15 Day Statement of Issues and Facts

August 12, 2008

Greg Bell, Director  
Industrial Relations  
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(202) 371-0992 (Fax)

#### Via Facsimile and First Class Mail

Ms. Mary Hercules  
Labor Relations Specialist  
U.S. Postal Service  
475 L'Enfant Plaza, SW  
Washington, D.C. 20260

Re: USPS No. Q00C4QC05073933, APWU No. HQTG20055,  
Separation of Casual Employees Pursuant to Article 12.5.C.5.a

Dear Ms. Hercules:

On June 26, 2008, we met to discuss the above-referenced dispute at Step 4 of the grievance procedure. The parties mutually agreed to submit their written statements no later than August 12, 2008. The following represent the APWU's understanding of the issues to be decided, and the facts giving rise to the interpretive dispute.

This dispute concerns the Postal Service's obligation, pursuant to Article 12, Section 5.C.5.a of the National Agreement to separate all casual employees in an installation to the extent that it will minimize the impact on regular work force (full-time and/or part-time) employees. Article 12, Section 5.C.5 governs the contractual requirements that must be followed when it is proposed to "*reduce the number of regular work force employees of an installation other than by attrition.*" The specific provision in dispute is Article 12, Section 5.C.5.a.2 of the National Agreement that mandates that the Postal Service "*to the extent possible, minimize the impact on regular workforce employees by separation of all casuals...*" Article 12, Section 5.C.5.a.2 does not limit the casual employees that have to be separated to any particular craft. To the contrary, it mandates that "all casuals" be separated to the extent possible to minimize the impact on regular workforce employees.

The Postal Service takes the position that they are only required to separate casual employees in the affected craft, rather than separate casuals regardless of craft designation to the extent that it will minimize the impact on regular work force employees. In support of its position, and in an attempt to avoid its obligation under the terms of Article 12, Section 5.C.5.a.2, the Postal Service cites Article 12, Section

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Ms. Mary Hercules  
Re: USPS No.: Q00C4QC05073933  
August 12, 2008  
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4.D (Principles of Reassignments). The Postal Service has elected to simply ignore the specific negotiated provisions Article 12, Section 5.C.5 (Reduction in the Number of Employees of an Installation Other Than by Attrition).

It is the APWU's position that prior to reassigning regular work force employees pursuant to Article 12.5.C.5.a, the Postal Service must separate all casual employees, regardless of craft designation, to the extent that it will minimize the impact on regular workforce (full-time and/or part-time) employees. The Postal Service does not have the right or discretion not to separate all casuals pursuant to Article 12.5.C.5.a.2, if doing so will eliminate the need to reassign a regular workforce employee. Moreover, disputes over whether the separation of casual employees in an installation pursuant to Article 12, Section 5.C.5.a would actually minimize the impact on the regular work force employees are subject to being decided based on local fact circumstances

In addition, the parties at the national level specifically agreed to the following interpretation (memorialized in a national level arbitration award) of Article 12, Section 5.C.5.a:

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

The mandate to separate all casual employees, regardless of craft designation pursuant to Article 12, Section 5.C.5.a.2 is consistent with the Postal Service's obligation under the terms of Article 12 that in effecting reassignment (excessing), dislocation and inconvenience to regular workforce employees must be kept to a minimum. The Postal Service's position is contrary to the intent and purpose of the negotiated protection provided for its regular workforce employees under the applicable provisions of Article 12 of the National Agreement.

It is the APWU's position that consistent with the negotiated intent and clear and unambiguous language of Article 12, Section 5.C.5.a, prior to reassigning regular workforce employees pursuant to Article 12.5.C.5; the Postal Service must separate all casual employees (regardless of craft designation) to the extent that it will minimize the impact on regular workforce employees. The APWU's position is consistent with, but not limited to, the application of the Memorandum of Understanding Re: Article 7, 12 and 13 – Cross Craft and Office Size, national level arbitration decisions, past practice and mutual understanding by the parties – that prior to reassigning regular workforce employees pursuant to Article 12, Section 5.C.5 the Postal Service must minimize the impact on regular workforce employees by separating all casual employees, regardless of craft designation.

It is the APWU's position that the Postal Service's action represents a blatant violation of the parties' collective bargaining agreement and disregard for its regular workforce employees. In addition, the Postal Service is attempting to achieve in arbitration what they have failed to achieve in contract negotiations. Moreover, the Postal Service knows full well that it might not be successful and of the irreparable harm that its action may cause regular workforce employees improperly reassigned and/or required to relocate as a result of the Postal Service's actions.

Ms. Mary Hercules  
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Please contact me if you wish to discuss this matter. It is requested that the parties expedite this dispute to be heard in arbitration

Sincerely,

  
Greg Bell, Director  
Industrial Relations

APWU #: HQTG20055  
USPS #: Q00C4QC05073933

Dispute Date: 3/21/2005  
Contract Articles: 12, Separation of Casuals;

cc: Industrial Relations

GB /bw



- (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; ...”

By letter dated March 21, 2005, the APWU initiated the instant dispute.

**Position of the Parties:**

It is the APWU's position that all casual employees within an installation, regardless of craft designation, must be separated pursuant to Article 12.5.C.5.a.(2), prior to excessing a regular employee.

The Postal Service disagrees. It is the Postal Service's position that the interpretation of Article 12.5.C.5.a.(2) was addressed by Arbitrator Snow, in his award for dispute number H0C-NA-C 12.<sup>1</sup> The issue before Arbitrator Snow was: "Does Article 12.5C.5.a(2) of the agreement between the American Postal Workers Union and the Employer grant the Employer discretion in separating casuals when doing so will minimize the impact on the regular workforce?" Arbitrator Snow concluded that the "language of Article 12.5.C.5.a(2) allows the Employer discretion in separating casuals to the extent that the discretion is exercised in a manner consistent with this report and decision." Moreover, Arbitrator Snow observed in his decision that 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.**" /emphasis added/ As discussed in the Snow decision, the Postal Service's testimonial evidence clarified that "if we can reduce casuals and save someone from being excessed, we would do it. If we can reduce them [casuals] and create full-time assignments, eight within nine or eight within 10 five days a week, we would do it." Continuing, Arbitrator Snow summarizes, "the Employer understands its obligation to be that of separating a casual worker if doing so will eliminate a need to reassign a regular workforce employee. But if separation of a casual employee will only defer the reassignment of a regular workforce employee, then the Employer maintains that it is not contractually obligated to separate the casual worker." See Snow award, page 15.

Following this interpretation, the Postal Service opines that Article 12.5.C.5.a.(2) only applies to the separation of casuals in the affected craft and not all casuals, in all crafts. The pecking order outlined in this section requires the Postal Service to first make a determination, by craft and occupational group the number of excess employees (5.a(1)); then the separation of all casuals to the extent possible (5.a(2)), then the reduction of part-time flexible hours to the extent possible (5.a(3)). Logically, if 5.a.(2) applies to all crafts, then so would 5.a.(3), which is an absurd result given the application and bargaining history of this section. Moreover, neither the separation of all casuals in non-impacted crafts nor the reduction of part-time flexible hours in non-impacted crafts, will produce a full-time assignment that will eliminate the need to excess a regular employee from a different and affected craft. It is not until the next step (5.a(4)) that the "necessary number of junior full-time employees in the salary level and craft, and occupational group affected" are identified as excess and reassigned to vacant assignments in other crafts in the same installation.

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<sup>1</sup> Note this case was assigned a new number for tracking, as Q90C-4Q-C 0002043.

Second, the Postal Service believes that Article 12.5.C.5.a.(2) requires it to minimize the impact on the regular work force by separating casuals to the extent possible. This provision does not require the automatic separation of all casuals, in all crafts, prior to reassigning an excess employee. The determination of the extent to which the separation of casuals is possible must be made by the employer based on operational requirements, on a case by case basis.

Last, it is the Postal Service's position that the provisions of Article 12.5.C.5.a.(2) are to be applied on a craft-by-craft basis. Therefore, in an excessing situation, management is required only to separate casuals, to the extent possible, in the affected craft. See Article 12.4.D.

Furthermore, the parties agreed in Questions and Answers Concerning Article 12 Excessing, at question 6, as follows:

"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." See Joint Contract Interpretation Manual, dated November 2005, Article 12, page 21.

For these reasons, the Postal Service is not required to automatically separate all casuals, in all crafts, prior to reassigning an excess employee pursuant to Article 12.5.C.5.a(2) of the National Agreement.

Step 4 time limits were waived by mutual consent with the understanding that 15-day statements would be exchanged on August 12.

Sincerely,



Mary Hércules  
Labor Relations Specialist  
Contract Administration (APWU)