

**WESTERN AREA ARBITRATION PANEL #2**

**In the Matter of the Arbitration Between: )**

**UNITED STATES POSTAL SERVICE )**

**and )**

**NATIONAL RURAL LETTER )**

**CARRIERS' ASSOCIATION )**

**Grievant: Class Action**

**Post Office: Rogersville, MO**

**USPS Case No. E18R-4E-C 20245351**

**NRLCA Case No. 640-163115C18.WES**

Before: Marshall A. Snider, Arbitrator

Appearances:

For the U.S. Postal Service: Ken Glassburner, Labor Relations Specialist

For the Union: Mark Gisler, Esq.

Place of Hearing: Virtual

Date of Hearing: December 4, 2020 (Record completed January 12, 2021)

Date of Award: January 22, 2021

Relevant Contract Provisions: Article 10, Section A, 2

Contract Year: 2018-21

Type of Grievance: Contract Dispute

**Award Summary**

The grievances are sustained. As a remedy for the denial of annual leave on May 26 and May 27, 2020, the Postal Service shall pay rural carriers [REDACTED] the equivalent of their daily rate of pay for two days. As a remedy for the denial of annual leave on May 26, 2020, the Postal Service shall pay rural carriers [REDACTED] the equivalent of their daily rate of pay for one day. The Arbitrator retains jurisdiction for 30 days to resolve any disputes regarding the remedy provided.

Pursuant to Article 15, Section 5, A of the National Agreement, the Arbitrator's fees will be borne by the United States Postal Service.

*/s/ Marshall A. Snider*

Marshall A. Snider

Arbitrator

## I. STATEMENT OF THE ISSUES

The parties did not stipulate to a statement of the issues. The Arbitrator states the issues as follows:

1. Did the United States Postal Service violate Article 10, Section 2, A of the National Agreement when it denied annual leave requests for May 26 and May 27, 2020 for regular rural carriers [REDACTED]?
2. Did the United States Postal Service violate Article 10, Section 2, A of the National Agreement when it denied annual leave requests for May 26, 2020 for regular rural carriers [REDACTED]?
3. If the United States Postal Service violated the National Agreement in the above respects, what is the appropriate remedy to be provided by the Postal Service?

## II. RELEVANT CONTRACT PROVISION

### ARTICLE 10

#### LEAVE

##### Section 2. Annual Leave

##### A. Minimum Units and Availability of Leave Replacements

Regular rural carriers shall be granted annual leave in minimum units of one day. Rural carriers should be granted annual leave in accordance with their personal wishes, provided a leave replacement is available. It shall be the responsibility of each rural carrier to plan annual leave at times when a leave replacement is available. If the leave replacement for the route is committed to serve another regular rural route, such leave replacement is not available. A regular rural carrier should not be unreasonably denied annual leave because of the leave replacement's assignment to a vacant route, auxiliary route, or a route where the regular carrier is on extended leave.

## III. FACTS

A. This matter involves annual leave requests by four regular rural carriers to take annual leave on Tuesday, May 26, 2020. May 26, 2020 was the day after the Memorial Day holiday. Each of these leave requests were denied by the Postal Service due to asserted "operational needs". The four leave requests were made by the following rural carriers:

On April 14, 2020, rural carrier [REDACTED] requested to take annual leave on May 26 and 27, 2020.<sup>1</sup> The Postal Service denied this request on May 4, 2020.

On May 2, 2020, rural carrier [REDACTED] requested to take annual leave on May 26 and 27, 2020.<sup>2</sup> The Postal Service denied this request on May 4, 2020.

On May 5, 2020, rural carrier [REDACTED] requested to take annual leave on May 26, 2020. The Postal Service denied this request on May 5, 2020.

On an unknown date in May, 2020, rural carrier [REDACTED] requested to take annual leave on May 26, 2020. On a subsequent unknown date the Postal Service denied this request.<sup>3</sup>

B. At the time of this grievance (May 8, 2020) the Rogersville, MO post office had eleven rural routes: ten regular rural routes and one auxiliary route. As of that date there were ten regular rural carriers at the Rogersville post office. This post office also had nine rural craft leave replacements (rural carrier associates, or RCAs). On May 26, 2020 one regular rural carrier was unavailable due to injury and two other regular rural carriers were unavailable because they had previously been approved for annual leave for that day. Those three routes and one auxiliary route were covered by RCAs on May 26. That left five rural craft leave replacements who were not scheduled to case and carry mail on any regular rural route on May 26, 2020. These five RCAs were [REDACTED].

C. On May 26, 2020 the five RCAs who were not scheduled on a regular route ([REDACTED]) worked between 8.58 hours and 12 hours, providing auxiliary assistance in the Rogersville post office. The remaining four RCAs worked between 11.5 and 13 hours on May 26. The four regular rural carriers who were denied leave for May 26 ([REDACTED]) worked between 8.08 hours and 12.5 hours on May 26. Collectively, these four regular rural carriers worked 42.16 hours.

D. On May 26, 2020 there were no vacant rural routes at the Rogersville post office. The auxiliary route (route 63) was covered on that day by RCA [REDACTED]. The route of the regular rural carrier who was unavailable due to injury leave was also covered.

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1. The crux of this grievance relates to the denial of the leave request for May 26. However, leave requests are granted or denied for all days requested. Therefore, when the Postal Service denied the request for leave on May 26 for any reason, it was required to deny the request for all days contained in the same leave request.

2. See footnote 1.

3. Neither the Union nor the Postal Service have been able to locate [REDACTED]'s leave request or documentation of the denial of that request. However, the parties have stipulated that these events occurred as set forth above.

E. On August 17, 2020 Labor Relations Specialist Nicholas Goodwin denied the grievance in this matter at Step 3. In this denial Goodwin described the operational needs of the Postal Service that management asserted would support the denial of the leave requests in this case. Goodwin noted that there was a large volume of mail the day after a holiday, because mail from Monday as well as Tuesday had to be delivered. The Union witness in the present case agreed that generally mail volume on the day after a holiday can be heavy, though not necessarily so in all cases.

In his denial of the grievance at Step 3 Goodwin also pointed to a national level grievance filed by the Union on June 18, 2020, in which the Union claimed that the Postal Service had failed to provide adequate relief for rural carriers who had been affected by the large growth in the volume of parcel deliveries occasioned by the Covid-19 pandemic and the resulting behaviors of customers.<sup>4</sup> A similar rationale was provided in the Step 2 denial on May 29, 2020, in which management noted that employees were becoming ill and customers were unwilling to shop in person, thus resulting in an increase in mail volume.

#### IV. POSITIONS OF THE PARTIES

The position of the National Rural Letter Carriers' Association (the Union) is that the second sentence of Article 10, Section 2, A of the National Agreement contains clear language that rural letter carriers' leave requests must be granted as long as a leave replacement is available, and that leave replacements were available for each of the grievants on May 26, 2020. The Union argues that Postal Service management is attempting to create an exception to this requirement that leave must be granted by adding non-existent language to the contract that leave may be denied if the Postal Service has an operational need to deny a leave request due to anticipated heavy mail volume .

The Postal Service asserts that Article 10, Section 2, A of the National Agreement should not be read to limit management's authority to deny annual leave when that denial is necessitated by reasonable operational needs. Management argues that the second sentence of Article 10, Section 2, A does not create a mandatory requirement that leave must be granted whenever it is requested. Rather, management points to the fact that the operative word in that sentence is that leave *should* be granted and that this word denotes an action that is permissive, not a mandatory requirement as would exist if the contract had provided that leave *shall* be granted. According to management, the last sentence of Article 10, Section 2, A is

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4. Presumably, this last reference is to the increase in on-line shopping brought on by the pandemic, resulting in an increased number of packages being mailed to customers.

consistent with its reading of the second sentence (that the granting of leave is not mandatory) by creating a standard by which to measure whether leave should or should not be granted. That standard is that leave should not be unreasonably denied. Management concludes that the leave requests in this case were not unreasonably denied because the Postal Service has a statutory obligation to provide prompt, reliable service, and it was reasonably foreseeable that May 26, 2020 would involve a high volume of mail that could not be promptly delivered if these leave requests were granted.

## V. DISCUSSION

### A. Arbitrability

No issues of arbitrability are present in this matter. The parties stipulated that the steps of the grievance process had been followed in a timely fashion or had been waived and that the matter was properly before the Arbitrator for a final and binding award.

### B. The *Schewe* Award

The Union has cited the award in the *Schewe* grievance [*United States Postal Service and National Rural Letter Carriers' Association*, Case No. J-15R-4J-C 16490303 (Arbitrator Newman, November 16, 2017)] in support of its position. Arbitrator Newman stated at page 9 of that award that Article 10, Section 2, A sets forth a presumption of entitlement to leave for rural carriers subject only to the availability of a replacement. However, she preceded this statement by saying that “there appears to be agreement” to that proposition. Therefore, Arbitrator Newman did not need to address the issue involved in the merits of the present grievance. In addition, the dispositive issue in that case was whether a leave replacement was or was not available. In the present matter there is no dispute that leave replacements were available as to each leave request. Therefore, the *Schewe* award is not instructive with regard to the merits of the issues in this case.

### C. Analysis of Article 10, Section 2, A of the National Agreement

1. The decision in this matter requires a determination of the meaning of the language setting forth the standards for the granting or denial of annual leave requests contained in Article 10, Section 2, A of the National Agreement. A number of principles regarding the reading of contract language are applicable to this decision. To ascertain the meaning of words in a labor agreement arbitrators first look to the language of the contract itself. Words in a labor agreement should usually be given their ordinary and customary meaning. Elkouri and Elkouri, *How Arbitration Works*, pg. 448 (6<sup>th</sup> Ed. 2003). If a single, reasonable, obvious meaning can be determined using no guide other than the language itself in the context

of the entire contract, this unambiguous contract language must be applied. See *United Grocers*, 92 LA 566, 569 (Gangle, 1989). If the words are plain and clear there is no occasion to resort to interpretation; the meaning of the contract can be derived entirely from the language used. Elkouri and Elkouri, *supra* at 434. Contract language provides the best evidence of the parties' agreement. *Brooklyn Acres Mutual Homes, Inc.*, 84 LA 952, 956 (Abrams, 1985).

The contract should be construed by looking at the labor agreement as a whole; the meaning of each section and sentence is to be determined in relation to the entire agreement. *Wells Badger Industries, Inc.*, 83 LA 517, 520 (Hales, 1984); Elkouri and Elkouri, *supra* at 462-63. The contract language in dispute should be read in its context in the labor agreement. *Racine Unified School District*, 102 LA 327, 331 (Baron, 1993); Elkouri and Elkouri, *supra* at 469.

2. The second sentence of Article 10, Section 2, A states that annual leave should be granted to a regular rural carrier as long as a leave replacement is available. The word "should" is not as strong a mandatory requirement as the word "shall", which is typically used in collective bargaining agreements to describe an absolute obligation of a party. As management points out, the drafters of Article 10, Section 2, A knew how to express a mandatory obligation, because they used the word "shall" in the first and third sentences of that section.

Nevertheless, "should" describes a requirement that is stronger than something that is wholly permissive or discretionary. A grant of such a discretionary or permissive right is often described by use of the word "may". The drafters of this section of the agreement therefore used a word that, while not as strong a word as "shall", nevertheless did not provide for discretion in granting leave by using the word "may". Rather, the word used was closer to one that is used to describe a mandatory requirement.<sup>5</sup> Therefore, looking only at the second sentence of Article 10, Section 2, A the most common and reasonably understood meaning of that sentence is that annual leave will be granted as long as a leave replacement is available. Nothing in that sentence, standing alone, suggests that the parties intended that management would have the right to deny annual leave even when a leave replacement was available.

Management nevertheless argues that the last sentence of Article 10, Section 2, A must be considered in tandem with the second sentence of that section. According to the Postal Service, because in its view the second sentence connotes only a possibility of the granting of

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5. Dictionary definitions are useful in determining the ordinary and customary meaning of words in a collective bargaining agreement. In one sense, "should" has been defined as expressing an obligation or duty. American Heritage College Dictionary, 3d Ed (1993); Dictionary.com.

leave, reading that sentence along with the last sentence creates a reasonableness standard for denying annual leave requests. The Arbitrator disagrees. To begin with, the Arbitrator has concluded above that the word “should” connotes more than the possibility of granting leave, but is obligatory as long as a leave replacement is available. In addition, nothing in the last sentence of Article 10, Section 2, A provides that as a general rule leave requests can be denied based upon a reasonableness standard. Rather, that last sentence deals with a specific situation, in which a leave replacement is assigned to a route which, for the reasons specified in that section, needs to be filled for a lengthy period of time.<sup>6</sup> There was no evidence that any of the five RCAs who were available on May 26 were assigned to one of the routes described in the last sentence of Section 2, A.

Therefore, the last sentence of Article 10, Section 2, A does not limit the right to annual leave granted to rural carriers by the second sentence of that section, except in the limited circumstances defined in that last sentence. Had the parties intended to create a reasonableness standard for *all* annual leave requests, the most logical way to do so would have been to place that requirement in or immediately after the second sentence and to not restrict the application of the reasonableness standard to a specifically limited set of circumstances.

3. The Postal Service argues that it has the management right under Article 3 of the National Agreement to deny leave requests based upon operational needs, as long as it acts reasonably in doing so.<sup>7</sup> It is understandable that management would want to take all steps reasonably necessary to ensure the prompt delivery of mail, which might have included having the grievants work on May 26. Nevertheless, management’s rights under Article 3 are subject to the provisions of the National Agreement and, as concluded above, Article 10, Section 2, A explicitly limits management’s rights by requiring that annual leave must be granted to a regular rural carrier as long as a leave replacement is available.

4. The Postal Service is asking the Arbitrator to impose a reasonableness standard on the granting of all leave requests, not just those which meet the requirements described in the last sentence of Article 10, Section 2, A. The National Agreement prohibits the Arbitrator from altering, amending or modifying the terms of that agreement. Article 15, Section 5, A. Accordingly, the Arbitrator cannot engraft onto Article 10, Section 2, A a discretionary standard

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6. This reading of the last sentence of Article 10, Section 2, A is consistent with the award in *United States Postal Service/National Rural Letter Carriers’ Association*, Case No. J-15R-4J-C 16490303 (Arbitrator Newman, November 16, 2017), at pg. 9.

7. Section 3,c of the National Agreement grants management the exclusive right to maintain the efficiency of its operations.

that permits the Postal Service to reasonably deny any leave request in order to meet operational needs.

5. The Arbitrator therefore concludes that the Postal Service violated Article 10, Section 2, A when it denied annual leave requests for May 26 and May 27, 2020 by regular rural carriers [REDACTED] and denied annual leave requests for May 26, 2020 by regular rural carriers [REDACTED]. The Arbitrator recognizes that this decision limits management's ability to deny annual leave, regardless of operational needs. Nevertheless, that is what the parties agreed to in the language of the collective bargaining agreement and the Arbitrator is obligated to apply that contractual language.

#### **D. Remedy**

The Union requests as a remedy for the denial of annual leave requests in violation of Article 10, Section 2, A that the grievants be made whole by paying each of them a sum equal to an additional daily rate of pay for each day of improperly denied leave. This remedy is consistent with the remedy granted by arbitrators in similar cases involving the Postal Service and the Union.

In the *Schewe* award (Arbitrator Newman, *supra*), Arbitrator Newman described the reasoning behind granting such a remedy as follows:

Once leave has been denied, and the employee is forced to work on a day his leave request should have been granted, it is impossible to put him in the place he would have been had the Employer complied with its contractual commitments. There is no *status quo ante* that can be replicated in this case. . . . [P]roviding the grievant the right to take future leave on a date he chooses to remedy this violation, is providing him a right to which he is already entitled under Article 10.2(A).

Newman, at pg. 11

Arbitrator Odom reached the same conclusion in *United States Postal Service and National Rural Letter Carriers' Association*, Case No. G15R-4G-C 17388338 (Arbitrator Odom, August 6, 2018). Arbitrator Odom concluded that the appropriate remedy for the denial of a request for four days of annual leave when a leave replacement was available was the payment of one day's wages for each of the four days of leave that was denied to the grievant. Arbitrator Odom noted that even though the grievant in that case did not suffer a financial loss, the denial of leave had a negative effect on him that was real and deserving of reasonable compensation. This remedy was reasonable, according to Arbitrator Odom, because the grievant could not be put back into the position he was in before the wrongful denial of his leave request.



The Postal Service in this case does not contest the Union's proposed remedy of a full day's wages for each day each carrier was not granted annual leave (Postal Service Post-Hearing Brief, pg. 12). Accordingly, the Arbitrator grants the relief requested by the Union.

## **VI. AWARD**

The grievances are sustained. As a remedy for the denial of annual leave on May 26 and May 27, 2020, the Postal Service shall pay rural carriers [REDACTED] the equivalent of their daily rate of pay for two days. As a remedy for the denial of annual leave on May 26, 2020, the Postal Service shall pay rural carriers [REDACTED] the equivalent of their daily rate of pay for one day. The Arbitrator retains jurisdiction for 30 days to resolve any disputes regarding the remedy provided.

Pursuant to Article 15, Section 5, A of the National Agreement, the Arbitrator's fees will be borne by the United States Postal Service.