



Rights & Benefits of Mail Handlers Upon Reassignment to Other Installations Under Article 12

As the Postal Service continues to manage through the ongoing economic downturn and the resulting drop in mail volume, it has increased the number of times that it plans to close, consolidate, centralize, or otherwise change mail processing facilities across the country. This means that, in increasing numbers, Mail Handlers are being excessed out of their installations and being forced to accept jobs in other installations, often far away from their current location.

The National Office therefore thought it would be helpful to all NPMHU representatives to review in this issue the rights and benefits of Mail Handlers who are adversely affected by involuntary reassignments to other installations. The rules governing these situations can be complex, so if you have any questions after reviewing this issue of *Union Time*, please do not hesitate to contact your Regional Office or the National Office for further assistance.

It is crucial to remember that a Mail Handler who is being excessed out of his or her installation is going through a traumatic experience. To be sure, being excessed is preferable to being terminated, and that is why the NPMHU National Agreement protects most Mail Handlers against nondisciplinary layoff or reduction in force. But a Mail Handler who is excessed out of the employee's current installation also is facing an important change in his or her career, so it is especially important that NPMHU representatives understand the rules that govern in this situation.

Article 6 – Layoff and Reduction in Force

The starting point for understanding the rights and benefits of Mail Handlers reassigned under Article 12 is to understand the related, but different protections included in Article 6 against layoff and reduction in force.

Under Article 6 and the Memorandum of Understanding Re Layoff Protection, no Mail Handler with six or more years of continuous service (Article 6) and no Mail Handler on the USPS rolls as of November 20, 2006 (MOU) may be subject to a layoff or reduction in force. (Both of these terms refer to forced separation from the Postal Service for lack of work or other, legitimate business reasons unrelated to discipline of the individual employee, with layoff referring to separation of non-preference eligible employees and reduction in force referring to separation of preference eligible employees.)

At this point, it is the NPMHU's understanding that the Postal Service has no intention of separating Mail Handlers under Article 6, and instead the Postal Service has chosen to offer voluntary early retirements and to reassign Mail Handlers under Article 12. If the Postal Service were to seek layoffs or reductions in force under Article 6, it would first have to separate all casuals, minimize overtime, reduce hours for part-time flexible employees, and seek volunteers to terminate their employment. Also, any separated Mail Handlers would be entitled to severance pay and benefit coverage (health and life insurance) to the extent provided in the Employee and Labor Relations Manual (ELM) and under various federal statutes and regulations.

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More could be written about the rights and benefits of Mail Handlers who are subject to layoff or reduction in force, but that discussion will be saved for a time, if any, when such actions are being contemplated.

Section 9.6 – Protected Salary Rates

In accordance with Section 9.6 and ELM Section 421.51, a Mail Handler whose job is eliminated and who is assigned to a vacancy in a lower grade (e.g., Level 5 Mail Handler to Level 4 Mail Handler; Mail Handler to Custodian) is provided with a protected rate, such that the employee continues to be paid the wage received in the previous higher grade position for up to two years. Certain conditions have to be met, as detailed in ELM Section 421.512, including that the reduction in salary was not disciplinary or voluntary; that the employee served in a position with the higher salary for two continuous years immediately preceding the effective date of the reduction; and that the higher salary was from a permanent position (not a temporary detail) and the employee's performance was satisfactory.

There is a separate provision providing for unlimited saved grade if an employee's job is eliminated due to technological and mechanization changes (see Article 4.4 of the National Agreement and ELM Section 421.53).

Article 12 – Reassignments or Excessing

When a Mail Handler is reassigned or excessed to another installation, Article 12 and the Contract Interpretation Manual (CIM) provide most of the governing rules. At the same time, there are certain rights and benefits that are not mentioned in Article 12, but nonetheless are applicable. We will outline each of those protections below. NPMHU representatives should note that the rights and benefits that might be available to Mail Handlers will differ, depending on whether the Mail Handler decides to comply with the Postal Service's decision to reassign or excess out of his or her current installation or whether the Mail Handler decides not to continue his or her postal employment.

The starting point is the general principle contained in Article 12 — that the dislocation and inconvenience to full-time regular and part-time flexible employees shall be kept to a minimum consistent with the needs of the Postal Service.

In general, affected Mail Handlers are entitled to an advance notice of not less than 60 days, if possible, before the Postal Service makes involuntary details or reassignments from one installation to another. As noted in the CIM, in a 1976 case involving the failure of management to provide the 60-days advance notice to mail handlers excessed to the Des Moines BMC, National Arbitrator Fasser ruled that "[t]he notices required... are substantive conditions... It is imperative that the notice requirements that are so carefully worked out at the bargaining table command the respect due them... The traumatic impact of the involuntary reassignment on the individual and his family embraces countless variations and ramifications. The purpose of the notice is to minimize to the extent possible, that traumatic impact." National Arbitration Award MC-C-325, dated December 8, 1976, available on MAILS, and also summarized in this issue of *Union Time*.

In addition, when involuntary reassignments are made, the affected employees are entitled to receive relocation benefits, including moving, mileage, per diem, and reimbursement for movement of household goods, as appropriate, and if legally payable pursuant to the applicable handbook. Currently, the reimbursement regulations are found in Handbook F-12, Relocation Policy, and Handbook F-15, Travel and Relocation. The F-12 covers relocation for bargaining unit employees, and the F-15 covers travel for all postal employees. To qualify for relocation allowances, the distance between an employee's new duty station and his/her old residence must be at least 35 miles greater than the distance between the employee's old duty station and the old residence. (In a 1979 National Award, Arbitrator Gamser concluded that employees who have been involuntarily reassigned are not entitled to additional relocation expenses when they voluntarily exercise retreat rights to return to their original facility. National Arbitration Award MC-N-1386, dated August 25, 1979, available on MAILS, and also summarized in this issue of *Union Time*.)

Article 12 also controls the seniority rules that are applicable upon excessing or reassignment out of the installation. Under Section 12.2G6, any Mail Handler involuntarily moving from one postal installation to another postal installation shall have seniority established as of the employee's time in the Mail Handler craft. On the other hand, Article 12 also

states that a Mail Handler who volunteers for reassignment will begin a new period of seniority, except as provided for in Section 12.6 (which contains special provisions governing seniority — e.g., when a senior employee elects to be reassigned to the gaining installation and takes the seniority of the senior full-time employee subject to involuntary reassignment). Finally, Article 12 makes clear that, if insufficient Mail Handler assignments are available, reassignments can be made to positions in other crafts in the same or lower level for which the minimum qualifications are met. In these circumstances, the Mail Handler's resulting seniority will be governed by the terms of the gaining craft's seniority provisions.

Two other items in Article 12 should be noted. First, Mail Handlers involuntarily reassigned out of their installation (but not senior employees who voluntarily elect to be reassigned in place of junior employees), are entitled to "retreat rights," if at the time of the reassignment they file a written request to be returned to the first Mail Handler vacancy in the level in the installation from which reassigned. Such a request for retreat rights must be honored, so long as the employee does not withdraw the request or decline to accept an opportunity to return. Second, in specific situations when involuntary reassignments are being made on a rolling basis into a gaining installation, those reassignments are treated as details for the first 120 days to ensure that the seniority of the reassigned Mail Handlers is not adversely affected by the mere circumstance of the timing of the reassignment (see Article 12, Sections 12.6B7 and 12.6C6). Significantly, there is no specific mention in Article 12 of the protections or benefits that attach to a Mail Handler who might decide it is in his or her best interest to refuse an involuntary reassignment, sometimes referred to as an involuntary separation if the reassignment was

outside of the employee's commuting area. In various meetings around the country, the Postal Service has been asserting or arguing that Mail Handlers in this situation are not entitled to any benefits, but there are various handbooks and manuals, as well as federal statutes and regulations, that say otherwise. So these provisions also need to be reviewed.

Discontinued Service Annuity

The Postal Service recognizes, as required by the U.S. Office

of Personnel Management (OPM), that Mail Handlers who decide not to accept an involuntary reassignment out of their installation and who meet all of the conditions and eligibility requirements set forth by OPM are entitled to receive a "discontinued service annuity." To qualify for a discontinued service annuity, a Mail Handler must meet each of the following criteria:

- Be at least age 50 with at least 20 years of creditable service or be any age with at least 25 years of service at the effective date of the involuntary separation. Accrued and unused annual leave or donated leave may be used to meet these age or service requirements.
- Have creditable service that includes at least 5 years of civilian service.
- Be separated from a position that is covered by CSRS, CSRS-Offset, or FERS.
- Not refuse a "reasonable offer of another position," which means an offer that is in writing, covers a position for which the Mail Handler qualifies, and — of most importance — is within the Mail Handlers "commuting area."

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In other words, a Mail Handler who meets the age and service credit requirements (i.e., age 50 with 20 years or any age with 25 years) and who is involuntarily reassigned or excessed to another installation outside of his or her commuting area may be eligible for a discontinued service annuity. Under OPM regulations, an offer outside of the Mail Handler's commuting area is not a reasonable offer, and thus OPM will consider the Mail Handler to be "involuntarily separated" and (assuming the other criteria are met) eligible for a discontinued service annuity.



OPM uses the following definition of "commuting area": the geographic area that usually constitutes one area for employment purposes. It includes any population center (or two or more neighboring ones) and the surrounding localities in which people live and reasonably can be expected to travel back and forth daily in their usual employment.

Further details about discontinued service annuities can be obtained from Chapter 44 of the OPM CSRS and FERS Handbook. A copy of that chapter is available at www.opm.gov/retire/pubs/handbook/C044.pdf or from the National Office.

Severance Pay

Another benefit that may be available to Mail Handlers who are notified that they are being reassigned or excessed out of their installation and outside of their commuting area —

and who have decided that they cannot accept the new assignment — is severance pay, which is governed by Section 5595 of Title 5 of the U.S. Code and ELM Section 435. Only recently, the Postal Service has unilaterally, and in the NPMHU's view improperly, taken the position that Mail Handlers and other USPS career employees are not eligible for severance pay under Article 12, but the NPMHU does not believe that the USPS position can withstand scrutiny. The NPMHU therefore has requested the Postal Service position in writing, and will challenge that position if necessary.

Under the referenced provisions of the U.S. Code and the ELM, "[a]ny career Postal Service employee who is involuntarily separated and who has been employed continuously by the Postal Service and/or other federal agency for at least 12 consecutive months (without a break in service of 3 or more consecutive days) immediately prior to the separation is eligible for severance pay, except in the following circumstances:

- a. The employee is entitled to an immediate retirement annuity.
- b. At the time of separation, the employee is offered and declines to accept a position in the Postal Service or in any other federal agency of like seniority, tenure, and pay within the same commuting area.
- c. The employee is separated because of entry in the military service.
- d. The employee is separated for cause on charges of misconduct, delinquency, or inefficiency.
- e. The employee, at the time of separation, is receiving compensation as a beneficiary of the Federal Employees Compensation Act except when receiving this compensation concurrently with postal pay.

Although in no case may severance pay exceed 52 weeks' basic compensation, when severance pay is calculated the employee is credited with one week's basic compensation, in effect at the time of separation, for each year of creditable service up to 10 years, and the employee is credited with two weeks' basic compensation for each year of creditable service in excess of 10 years. In addition, each 3-month period of service that exceeds 1 or more full years of service is computed as 25 percent of a full year. Adjustments to these rules exist for part-time employees. In addition, an employee who is over age forty has his or her basic allowance increased by 10 percent for each full year and by 2½ percent for each 3 full months in excess of a full year that the employee's age exceeds 40 years at the time of separation.

In its most recent Publication 164 dated June 2008 (“Compensation, Relocation Benefits, and Reinstatement Policies for Career Employees in Transition: Q’s and A’s”), the Postal Service has taken the position that severance pay is available to its bargaining unit employees only under Article 6, in response to a layoff or a reduction in force. Indeed, that publication states that “[b]argaining employees impacted by involuntary reassignments outside of their local commuting area under Article 12 of the [National Agreement]... are not entitled to severance pay.”

The NPMHU position, however, is to the contrary. To begin with, the Pub. 164 states that it is “intended only as overview of compensation, relocation benefits, and reinstatement policies for career employees,” and that actual “policies and regulations governing these programs” are found in various USPS “handbooks and manuals.” Indeed, not only does ELM 435 directly provide for severance pay coverage in this situation, but even the Postal Service’s own Publication 164 — in its September 2007, January 2003, and May 1999 editions — stated clearly that a bargaining unit employee would be eligible for severance pay. In January 2003, for example, Publication 164 included the following language to explain when bargaining unit employees were eligible for severance pay: “if you receive an involuntary reassignment under the terms of your collective bargaining agreement to a position outside your commuting area and you elect to do either of the following: (1) Voluntarily resign prior to the effective date of your involuntary reassignment[; or] (2) Decline the involuntary assignment and you receive an involuntary separation notice from the Postal Service.”

In short, the bottom line is that Mail Handlers should be eligible for severance pay, in accordance with ELM Section 435 and the governing statute and regulations, if they refuse relocation outside of their commuting area. Any Mail Handler who is denied severance pay under these circumstances should file a grievance within fourteen days.

Both Discontinued Service Annuity and Severance Pay

Assuming that a Mail Handler refuses to accept a reassignment outside of the commuting area, it is possible that the Mail Handler could technically meet the eligibility requirements for both a discontinued service annuity and severance pay. Receiving both of these benefits is not possible, however, because someone eligible for a retirement annuity (including a discontinued service annuity)

is not also eligible for severance pay; thus, no individual employee is entitled to receive both a discontinued service annuity and severance pay. An employee eligible for a discontinued service annuity generally should seek such a benefit from OPM, whereas a Mail Handler who is not eligible for a discontinued service annuity (e.g., does not have the requisite years of service) should be thinking about the severance pay alternative. If you are unsure about eligibility, claims for both should be filed.

Other Issues

Under Article 12.6C5b8, a full-time Mail Handler who is being involuntarily reassigned to another installation has the option of changing to part-time flexible in the same craft in lieu of the reassignment. This usually is not an acceptable option, however, as the employee can simply be excessed by the Postal Service after he or she accepts the new status.

The NPMHU holds the position that a Mail Handler who refuses to report to an involuntary reassignment outside of the commuting area should be issued a Form 50 indicating “involuntary separation.” The Postal Service would prefer that the employee resigns his or her Mail Handler position, and if no resignation is forthcoming, may claim that the employee was terminated or separated for “failure to report.” Neither of these latter options — resignation or termination/separation for “failure to report” — should be accepted without filing a grievance, as they could be construed either as a voluntary quit or as discipline. Moreover, depending on the State, an employee who resigns may not qualify for unemployment insurance, and a Mail Handler who has refused to report to a reassignment outside of his or her commuting area certainly is not quitting a career position voluntarily.

Finally, a Mail Handler who refuses to report to an involuntary reassignment may be considered for reinstatement, provided that he or she meets all of the qualification and examination requirements, and the separation was not a removal action for cause or a resignation after such charges were proposed or filed. Reinstatement consideration has no time limits, if the Mail Handler had three years of continuous service or is entitled to veterans’ preference; otherwise, reinstatement consideration is limited to three years after separation.

Summaries of Arbitration Decisions

“The great aim of education is not knowledge but action.”

~ Herbert Spencer

A good Union representative is always learning, not only from his or her own experience, but also from the experiences of others.

All of our Union brothers and sisters depend on their Union representatives to present their grievances and arbitrations in an effective manner. And one way to keep alert to alternative approaches and strategies is to read the results — the wins and the losses — of actual arbitration decisions. Indeed, frequently the eventual outcome of an arbitration hinges on the quality of the grievance investigation and documentation that is initially completed by the Union steward.

Your best source to obtain copies of actual arbitration awards is the NPMHU’s own web-based MAILES system (Mail Handlers Arbitration Interactive Library Search System). If you have not done so already, sign up for your own username and password on the NPMHU webpage. MAILES is fully searchable, and it is a valuable resource that every Union representative should be taking advantage of. Should you need more information about the MAILES system, please feel free to contact the Contract Administration Department at NPMHU Headquarters in Washington, DC.

DISCLAIMER: *The arbitration awards described might be helpful to you; but remember, these are summaries only. You should review the complete decision before deciding whether and how a particular decision might help in the handling of a pending grievance or arbitration.*

Article 12.6B5 – Advance Notice of Involuntary Reassignment (National Arbitrator Fasser, 12/8/1976)

GRIEVANT: Class Action (Omaha, Nebraska Post Office)

CASE NO.: MC-C-325

BACKGROUND: This grievance arose when the Postal Service involuntarily reassigned 33 Mail Handlers from the Omaha, Nebraska Post Office to the Des Moines, Iowa Bulk Mail Center (BMC). The Union claimed that the Postal Service violated the protective notice provisions of the National Agreement when, on March 9, 1976, it ordered the involuntary reassignments which were to become effective April 10, 1976.

ISSUE: Did the Postal Service violate the National Agreement by not giving proper notice of involuntary reassignment?

AWARD: The arbitrator concluded that the Postal Service provided sufficient notice to the National, Regional, and Local Union representatives, but failed to respect the need for 60-day notice to the individual employees. The arbitrator therefore found a violation of [Article 12.6B5].

OF NOTE: Appendix A to the 1973 and 1975 National Agreements [provisions that are now located in Article 12.6B5], read as follows:

Full-time and part-time flexible employees involuntarily detailed or reassigned from one installation to another shall be given not less than 60 days advance notice, if possible, and shall receive moving, mileage, per diem and reimbursement for movement of household goods, as appropriate, if legally payable, will be governed by the standardized Government travel regulations as set forth in Methods Handbook [F-10] “Travel.”

During his discussion of this grievance, National Arbitrator Fasser noted as follows:

The notices required throughout the Agreement and especially those contained in Article 12 are substantive conditions. The underlying purpose of the notice requirements is to keep the Union informed about changes that affect the day-to-day relationship of the parties. It is imperative that the notice requirements that are so carefully worked out at the bargaining table command the respect due them. This is especially true in situations such as the excessing under consideration here. The traumatic impact of the involuntary reassignment on the individual and his family embraces countless variations and ramifications. The purpose of notice is to minimize to the extent possible, that traumatic impact.

Given the importance of the 60-day notice provision, the arbitrator specifically found that management's decision to provide these employees with less than 60 days of advance notice (from March 9 through April 10) was a direct violation of the National Agreement. As a remedy, he ordered the Postal Service to provide the affected mail handlers with an additional 45-day notice period, and another opportunity to choose from among the available options and job opportunities.

Finally, because this decision was issued by a National-level arbitrator, it remains binding on the Postal Service in all geographic areas across the country.

Involuntary Reassignment: Relocation Allowance Upon Exercise of Retreat Rights (National Arbitrator Gamser, 8/25/1979)

GRIEVANT: Class Action (Boston, MA Post Office)

CASE NO.: MC-N-1386

BACKGROUND: The grievants, Mail Handlers at the Boston Post Office, were advised by a letter dated March 22, 1976, that they were excess to the needs of the Boston Post Office, and were, therefore, subject to involuntary reassignment to another duty station pursuant to Appendix A, Section 1C5 of the 1975 National Agreement. The grievants were given the right to complete a preference form on

which they indicated their respective choices from among alternative duty stations which were available. They were also given the right to choose to revert to part-time flexible status. On April 24, 1976, the grievants, having chosen not to become part-time flexibles, were involuntary reassigned to the Bulk Mail Center in Springfield, Massachusetts. They were reimbursed for expenses incurred in connection with this transfer in accordance with the provisions of the M-9 Handbook, which covered allowances for relocation expenses at that time.

The grievants all requested that they be granted retreat rights to the Boston Post Office pursuant to the provisions of Appendix A, Section 1C5b(6) (which now appears in Article 12.6B5). On June 24, 1977, they were advised that they were being transferred back to Boston as unassigned regular Mail Handlers. In the letter so advising them, they were also informed that they were not eligible for relocation allowance payments to cover the expenses involved in returning to the Boston Post Office from the Springfield Bulk Mail Center. When they did return to Boston, they were not paid any allowance to cover the expenses which they incurred in making this change in duty station. Thereafter, the Union filed a grievance on their behalf in which reimbursement for such expenses was requested.

ISSUE: Did the Postal Service violate the provisions of the 1975 National Agreement when not paying a relocation reimbursement to the grievants upon exercise of their retreat rights to the Boston Post Office.

AWARD: The grievance was denied.

OF NOTE: The Union claimed that the exercise of retreat rights by involuntarily assigned employees, to return to their original duty station, is subsumed in the term "involuntarily reassigned" as used in Appendix A, Section 1B5. For that reason, such employees are entitled to relocation expenses in connection with their return under that contractual provision.

The Postal Service argued that, in order to receive reimbursement for expenses incurred in relocation, an employee would have to relocate pursuant to an involuntary reassignment and such reimbursement must be consistent with the

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provisions of the M-9 Handbook. Neither of these conditions were met when these grievants exercised their retreat rights in order to return to the Boston Post Office.

The Postal Service also pointed to the provisions of a 1966 Comptroller General decision, which held that reimbursement for expenses incurred in re-transferring to an original duty station could only be allowed when such transfer was primarily for the benefit of the Postal Service, rather than for the benefit or personal convenience of the employee. In this case, according to the USPS, the return to Boston was strictly for the benefit of, and at the request of, the employees involved.

The arbitrator noted that the governing handbook provided for reimbursement when:

Transfer of an employee from one official station to another for permanent duty, provided the transfer is in the interest of the Postal Service and not primarily one for the convenience or benefit "of the employee or at his request..." (Handbook M-9, Section 414.1) (emphasis in original)

That is the nub of the matter insofar as the travel regulations are concerned. The movement of the employee must provide a benefit primarily to the Service and not to the individual employee. The movement must be initiated by the Service and not by the individual. In this case, the grievants were reassigned to Boston not to benefit the Service, but because they exercised their option to seek retreat rights back to the Boston Post Office. In these circumstances, although they received expenses when they first were involuntarily reassigned from Boston, they were not entitled to relocation costs when they chose to retreat to Boston.

Because this decision was issued by a National-level arbitrator, it remains binding in all geographic areas across the country.

Severance Pay if Involuntary Reassignment is Outside Commuting Area (Arbitrator Wolf, 8/9/2004)

GRIEVANT: Class Action (Lehigh Valley, Pennsylvania REC)

CASE NO.: C98C-1C-C 00168976

BACKGROUND: This is a regional arbitration between the American Postal Workers Union (APWU or Union) and the U.S. Postal Service.

On March 1, 2000, the Manager of Selection, Evaluation and Recognition at USPS Headquarters sent a memorandum to all area HR Managers stating the following:

As you are aware, the U.S. Postal Service has publicly announced the closing of 28 remote encoding centers (RECs) nationwide over the next two years, four of which have already been successfully closed. In accordance with the current labor agreement with the American Postal Workers Union (APWU), AFL-CIO, we have a contractual obligation under the provisions of Article 12 to reassign career bargaining unit employees impacted by the REC closings to other postal positions. While our goal is to minimize the disruptive impact that such reassignments may have on our employees by reassigning them to positions within their commuting area and with the same tenure (i.e., full-time to full-time), in some cases, such assignments may not be available.

Therefore, when a career bargaining unit employee declines, in writing, an involuntary reassignment that (1) changes the employee's tenure or (2) is outside the employee's commuting area, he/she shall be afforded the option of being involuntarily separated from the Postal Service and, if otherwise eligible, receive severance pay or a discontinued service annuity. In addition, the employee also has the option of voluntarily resigning, in writing, prior to the effective date of their involuntary separation, and once again, if otherwise eligible, receiving severance pay or a discontinued service annuity. In those cases where an employee declines an involuntary reassignment, as described above, the effective date of the involuntary separation is the next full pay period after receipt of the employee's declination.

Attached to this memorandum were several form documents designed to implement this policy. The first attachment was entitled "Options for Those Employees Who Receive an Involuntary Reassignment Outside the Commuting Area or Results in a Change in Tenure." Employees who were offered reassignment outside of their "commuting area" were notified in greater detail of their options. They were told that they could be subject to removal if they did not report for duty at their new positions, unless they completed a second form indicating that they declined the reassignment; this document stated that an employee would not be entitled to severance pay if he/she declined reassignment to a position "within the commuting area." Also attached was a form that employees were to use to either accept or decline the involuntary reassignment.

Several employees at the Lehigh Valley REC declined reassignments to facilities that were more than 50 miles, but less than 100 miles, beyond the REC. Those employees were given severance pay. However, three relatively junior employees were not eligible for reassignment within the 50 mile radius and had initially indicated a willingness to accept reassignments beyond the 50 mile radius. After doing so, however, each of these employees signed the form indicating that they were declining the reassignments. Those three employees resigned and requested severance pay; their requests were denied.

ISSUE: Were the grievants at the Lehigh Valley Remote Encoding Center involuntarily reassigned? If so, were they eligible for severance pay?

AWARD: The grievance is sustained. Each of the grievants was involuntarily reassigned to a new duty station as a result of the closing of the Lehigh Valley REC. These reassignments were outside a 50 mile radius from the Lehigh Valley REC. When they declined these reassignments, these grievants were entitled to receive, but were denied, severance pay. As a remedy, these three employees are entitled to receive severance pay they should have received in 2000.

OF NOTE: The Postal Service argued that all Lehigh Valley REC employees were reassigned in a manner consistent with Article 12. In particular, the Postal Service

argued that Article 12, in Section 5C, refers to a 100 mile radius for the reassignment of employees from a discontinued facility (similar to Article 12.6C5b of the NPMHU National Agreement), and that the distance of 100 miles is the sole measure of whether employees may receive severance pay. According to the Postal Service, the Union's reliance on a 50-mile radius is misplaced. The Postal Service claimed that the Union mistakenly cited various documents that use a 50-mile radius as the basis for paying relocation benefits or travel expenses, not severance pay.



The real disagreement in this case is not over the involuntariness of the reassignments, but over the question whether severance pay is available to employees who declined reassignments that were more than 50, but less than 100, miles from the Lehigh Valley REC. Article 12, Section 5C1 addresses reassignment rights, but does not address severance pay. Although it states that the Postal Service may reassign employees within 100 miles of the discontinued installation, it says nothing about severance pay for employees who decline such assignments.

While "local commuting area" had previously been defined in various handbooks and documents for other purposes, there is no reason to believe and no evidence to support the

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notion that “commuting area” or “local commuting area” had different meanings when applied to travel pay and when applied to severance pay. When employees of the Lehigh Valley REC were advised of their involuntary reassignments, they would have concluded that this meant the same 50 mile radius applied to other benefits that were tied to travel outside of a commuting area. None of the documents sent to employees would have suggested that a 100-mile radius applied to severance pay.



In the end, the only evidence arguably in support of the Postal Service’s position is Article 12.5C1 itself. However, that provision’s reference to 100 miles does not address severance pay and does not use the terms “commuting area” or “local commuting area.” Instead, that provision appears merely to prescribe the limit of management’s authority to unilaterally make reassignments; involuntary reassignments beyond 100 miles may only be made after consultation with the Union. Nothing therein suggests that the 100 mile limitation defines “commuting area” or the entitlement to severance pay, especially since severance pay is addressed in a wholly separate part of the contract (Article 6.E) and in governing ELM provisions. For these reasons, the arbitrator concluded that the 100 miles referred to in Article 12.5C1 is inapplicable to the question of entitlement to severance pay.

The “commuting area” for purposes of severance pay in this case therefore means the 50 mile radius referred to in prior Step 4 agreements and in the handbooks in evidence.

The remaining question is whether the grievants are entitled to severance pay under this definition of “commuting area.” This question arises because the Postal Service claimed that these employees originally agreed to a reassignment beyond the 50 mile radius, but then changed their minds. The Postal Service suggested that, in light of these facts, the reassignments of these three employees were not involuntary. The facts did not fit or support this thesis, however. All employees of the Lehigh Valley REC were excessed and all were compelled to accept a transfer if they wished to maintain their Postal Service employment. While more senior employees were able to transfer into jobs within a 50 mile radius, even they were involuntarily reassigned, as was made clear in the documents accompanying the manager’s March 1, 2000 memorandum.

The fact that these three grievants initially indicated a willingness to accept reassignment did not undermine the fact that they were forced to do so because of the REC closure; they were involuntarily subject to reassignment. Their initial assents also did not vitiate their later decisions to decline the forced reassignment, and therefore they remained eligible for severance pay.

Severance Pay After Resignation Upon Notice of Involuntary Reassignment (Arbitrator Shea, 9/30/2004)

GRIEVANT: Individual (Atlantic City, Post Office)

CASE NO.: COOC-4C-C 03091746

BACKGROUND: This is a regional arbitration between the American Postal Workers Union (APWU or Union) and the U.S. Postal Service.

Based upon his review of the evidence, the arbitrator issued the following findings of fact.

- 1. November 8, 2002:** The Postal Service notified the grievant in writing that, effective November 16, 2002, he was not to report to his bid position at the Atlantic City, NJ Post Office, but rather to a new position at the Swedesboro, NJ postal facility.

2. **November 13, 2002:** In response to the Service's November 8, 2002 notification, the grievant submitted his resignation from his postal employment effective November 15, 2002, and requested severance pay.
3. **December 12, 2002:** The Union initiated the underlying grievance in this matter at Step 1 of the grievance procedure.
4. **December 16, 2002:** The Union filed a Step 2 appeal. The record did not contain evidence that the Service responded to that appeal.
5. **February 27, 2003:** The Union filed a Step 3 appeal. The Union, in addition to setting forth its factual and contractual contentions, stated the following: "Other conditions listed in Pub 164 and ELM 438.11b were not met. The USPS erroneously states that the job offered in the [Swedesboro facility] is within the 50 mile radius local commuting distance. The distance between the Atlantic City facility and the [Swedesboro facility] exceeds the 50 mile radius. Therefore the grievant is entitled to severance pay. Mutual time limit extensions were agreed upon for extenuating circumstances. The grievance is advanced without a Step 2 Management response, will forward when received."
6. The Service denied the Step 3 appeal on substantive and procedural grounds. The Union decided to appeal to arbitration.

ISSUE: Is the instant matter non-arbitrable by reason of the Union's failure to initiate or process the underlying grievance in accordance with the time limits prescribed in Article 15 of the Agreement?

If the matter is arbitrable, did the Service violate the National Agreement, specifically Article 19, when it declined to give the grievant severance pay in accordance with certain Handbooks and Manuals covered by that Article?

AWARD: For the reasons more fully set forth in the opinion, the arbitrator determined that the matter was arbitrable. The arbitrator further determined that the Service violated Article 19 of the National Agreement when it declined to give the grievant severance pay. The arbitrator, therefore, ordered the Service to pay the grievant the severance pay he requested.

OF NOTE: The parties differed significantly as to whether or not the provisions of ELM Section 435.1

applied to the circumstances of the grievant's separation from his postal employment.

The Service maintained that the grievant's separation was a voluntary resignation from a position he had accepted at Swedesboro facility. Based upon this premise, the Service argued that ELM Section 435.1 did not entitle the grievant to any severance pay.

Conversely, the Union maintained that the grievant was involuntarily separated because (a) the Service excessed him from his Atlantic City position and involuntarily reassigned him to a position outside his commuting area and (b) the grievant exercised his contractual right to decline such a reassignment. In such circumstances, the Union contended, the grievant was entitled to severance pay pursuant to the provisions of ELM Section 435.1. The disposition of the grievance required the arbitrator to determine the intended meaning of the phrase "involuntarily separated" as used in ELM Section 435.1.

Although the ELM does not define the meaning of that phrase, to determine the intended meaning of an undefined term or phrase used by a party or parties in a document, arbitrators often look for guidance in contemporary documents promulgated by the same party or parties. Arbitrators attribute the universal meaning ascribed to the term in question by the promulgating party or parties in the contemporary documents. This Arbitrator found that Publication 164 and ELM Section 435.1 to be such contemporary documents.

After consideration of Publication 164, the arbitrator determined that the Service intended the phrase "involuntarily separated," as used in ELM Section 435.1, to include an employee's resignation from his/her employment after the employee declined an involuntary reassignment outside of his/her commuting area. The phrase "your commuting area," as used in Publication 164, also was undefined, but it was defined by ELM Section 438. 11. Applying similar rules of document construction, the arbitrator determined that the Service intended that phrase to mean "the suburban area immediately surrounding the employee's official duty station and within a radius of 50 miles."

In these circumstances, the arbitrator concluded that the grievant was entitled to severance pay under ELM Section 435 and Article 19.

1101 Connecticut Ave NW
Suite 500
Washington, D.C. 20036
(202) 833-9095
www.npmhu.org



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