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## Article 7 - Casuals

G06C-4G-C 08248741 – Rogers, AR

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**Summary:** This case involves the issue of hiring a casual to replace an employee that voluntarily enlisted for a four (4) year term. The Service argued that any “military leave” constitutes a valid “trigger” for hiring a casual versus a career employee regardless of the circumstances involved.

Our position was that “triggers” were not negotiated, but arbitrarily established by the Service and, while we accept military leave as a valid reason in some cases, we do not accept military leave as a “magic bullet” regardless of the circumstances.

The circumstances in this case involved a career PTF leaving to serve a four (4) year enlistment term for the purposes of obtaining the necessary time to gain eligibility for a military pension. The Service agreed that USERRA laws require them to hold a position open for five (5) years and that they could hire a casual or casuals a year at a time rather than hire a career replacement.

Our position is that voluntary enlistment, especially those for extended periods such as four (4) years, fall outside the concept of a “limited term” supplemental employee as contemplated by the provisions of Article 7.1.B.1.

The arbitrator sustained the grievance, ordered the Service to hire a career employee, and awarded compensation at the overtime rate to be distributed as directed by the Union to members of the Clerk Craft.



**I. ISSUE**

Did the Postal Service violate the National Contract when a casual employee was hired to replace a military employee on leave? If so, what is the appropriate remedy?

**II. STIPULATION**

1. The remedy that the Union is seeking is a cease and desist and overtime compensation for those hours worked by the casual.
2. The parties will rely on the Das Award.

**III. RELEVANT CONTRACT PROVISIONS**

**ARTICLE 7  
EMPLOYEE CLASSIFICATIONS**

**Section 1. Definition and Use**

**B. Supplemental Work Force**

1. The supplemental work force shall be comprised of casual employees. Casual employees are those who may be utilized as a limited term supplemental work force, but may not be employed in lieu of full or part-time employees. **However, in Postal installations which have 200 or more man years of employment in the regular work force, clerk craft casual employees will not be considered "employed in lieu of full or part-time employees."**
6. **Casual employees may be hired for a term not to exceed 360 calendar days.**

**ARTICLE 19  
HANDBOOKS AND MANUALS**

Those parts of all handbooks, manuals and published regulations of the Postal Service, that directly relate to wages, hours or working

conditions, as they apply to employees covered by this Agreement, shall contain nothing that conflicts with this Agreement, and shall be continued in effect except that the Employer shall have the right to make changes that are not inconsistent with this Agreement and that are fair, reasonable, and equitable. This includes, but is not limited to, the Postal Service Manual and the F-21, Timekeeper's Instructions.

### **Handbook EL-312, Employment and Placement**

#### **771 Policy**

##### **771.2 Duration of Uniformed Service**

Under USERRA, the cumulative length of absence from employment because of military service is limited to 5 years. The following are exceptions to this limit:

- a. Service required in excess of 5 years to complete the initial period of service obligation.
- b. Service from which a person, without control over the circumstances, is unable to obtain release.

#### **772 Management — Supervisor Action**

##### **772.1 Notification of the Employee's Rights and Obligations**

Managers are responsible for notifying employees orally or in writing of their rights, obligations, and benefits before departing for and upon return from active service. This notification includes any appeal and grievance rights.

However, this does not relieve the employee from the responsibility to exercise due diligence to request this information from management or the appropriate human resource office.

##### **772.3 Personnel Action**

Employees called for active duty are to be placed in a LWOP status, using NOA-460 and Special Benefit

Code *U* as stated in CMS Update 97.70, dated December 5, 1997.

Individuals who exercise a written option to resign with the intention of not returning to the Postal Service must be advised that their restoration rights are not affected by the resignation. In these cases, a resignation military, NOA-313, is to be initiated. These individuals will be restored to employment and are entitled to seniority as if they had never left for military service. However, they forfeit the nonseniority based employment benefits they would have earned during the period of military service if they had not resigned and had opted instead to go on LWOP. Employees should be advised that they forfeit nonseniority rights if they elect to resign their employment, but later seek reemployment following military service.

#### **IV. FACTS**

A career postal employee enlisted into the Military. Management hired a casual employee to fill the career employee's position after he announced he would be in the Army for a period of not less than four years.

The Union filed this grievance to contest the hiring of the casual instead of a career employee.

#### **V. UNION'S CONTENTIONS**

The Union has alleged that Article 7.1.B.1 was violated by Management when a casual employee was hired in lieu of a career employee. It was stated by the Union that Article 7.B.6 provided that casual employees could be hired for a term limit of 360 calendar days, however four years were excessive.

The Southwest Area Casual Trigger guidelines could not be used to replace the mandate of Article 7, according to the Union. They further stated that the trigger guidelines were implemented to be used as support when hiring short term workforce. The Union averred that to hire a casual for a period of five years in the absence of a career employee was not a proper use of supplemental workforce under Article 7.

In support of its argument, the Union cited the Das Award (case no. Q98C-41-C 00100499) and the Downes Memorandum. The Union has argued that these documents provide for limited terms for casuals and they do not provide for the usage of a casual for 5 years.

The Union also argued that it was conceivable that the enlisted employee would remain in the Army to meet retirement qualification. The Union cited the Postmaster's testimony wherein it was stated that the employee had 13 years in the military and was enlisting to obtain military retirement.

In closing, the Union requested remedy in the nature of a cease and desist along with overtime pay for the clerk craft bargaining unit.

## **VI. MANAGEMENT'S CONTENTIONS**

Management has argued that Article 7.1.B.1 allowed it to use a casual in place of the employee who enlisted for military duty. Management further argued that it was obligated under the Uniformed Services Employment and Reemployment Rights Act of 1994, to place the employee in a leave without pay status and give them non-seniority based benefits.

Management averred that it did not hire a casual in lieu of a career employee because the employee on active duty was still on the rolls of the Postal Service, holding a career position. It was Management's position that it had to hold an assignment open for an employee on military duty for five years. Thus, Management stated that the placement of a career employee in that position would create two career employees for one position when military duty ended.

## **VII. DISCUSSION AND OPINION**

The issue in this grievance involved the hiring of a casual to replace a career employee who enlisted into the military for 5 or more years. Whether or not Management was justified in hiring a casual under Article 7.1.B.1 was in dispute by the parties. The case at bar further defines the issue where a casual was utilized to replace a career employee who chose to enlist in the army.

Many Arbitrators have addressed the issue of the utilization/hiring of casuals in the workplace. Arbitrator Gary J. Wooters in case number B00M1BC06072461/060009, opined:

The other category which must be considered is employees out on military duty. Such cases need to be justified on a case-by-case basis

to determine the predictability of a return to postal employment. The Union argued that such returns to postal service can be handled through attrition of the regular work force. On this record, I do not know what the attrition rate is in the career work force. Nor does this record disclose with any clarity the status of one of two employees listed in military Service. One, who enlisted for three years, I believe, should have been replaced by a career employee. I am not clear about the expected return of the other and find the Union has not shown a violation in this regard.

Arbitrator Wooters correctly stated that these cases should be examined on a case-by-case basis. It is clear that Arbitrator Wooters viewed a three year military departure as a need to hire a career employee.

Applying the rationale of Arbitrator Wooters to the case at bar strongly suggest a need to hire a career employee. In substantiation of the “predictability”, suggested by Arbitrator Wooters, the Union cited the Post Master’s testimony wherein she stated that the career employee desired to acquire his military retirement with 13 years of service. Thus, it was conceivable from this testimony that the employee would be out in excess of 5 years.

Management had a mandate to utilize casual employees for heavy loads of work or short terms as supplemental workforce. Where it was reasonable to believe that the employee would be away from his Postal employment at a minimum of five years, Management had no justification to assert that the hiring of a casual was within the guidelines of the National Agreement.

Although Article 7 allowed Management to hire a casual for 360 days, the hiring of five to seven casuals to cover the military absence was not the intent of the authors of the National Agreement. Thus, this grievance must be sustained.

The remedy shall be imposed as a cease and desist of utilizing a casual to replace the military absence. Additionally, Management shall hire a career employee and pay the clerk craft for those hours worked by the casual at the overtime rate. The Union shall designate the appropriate employees to be paid.

Award

Management violated Article 7 when it hired a casual employee to replace an enlisted military employee.

The grievance is sustained and Management shall adhere to the above mentioned remedy.

*Glenda M. August*

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GLENDAM. AUGUST  
Arbitrator

October 3, 2009  
New Iberia, LA