NATIONAL ARBITRATION PANEL

In the Matter of the Arbitration	)	
	)	
between	)	
	)	
UNITED STATES POSTAL SERVICE	)	
	)	
and	)	
	)	
NATIONAL ASSOCIATION OF LETTER CARRIERS, AFL-CIO	)	Case No. Q11N-4Q-C 14239951
	)	
and	)	
	)	
AMERICAN POSTAL WORKERS UNION, AFL-CIO - INTERVENOR	)	
	)	
and	)	
	)	
NATIONAL POSTAL MAIL HANDLERS UNION, AFL-CIO - INTERVENOR	)	

BEFORE: Shyam Das

APPEARANCES:

For the Postal Service:	Syeda H. Maghrabi, Esq. Alexander MacDonald, Esq.
For the NALC:	Keith E. Secular, Esquire
For the APWU:	Melinda K. Holmes, Esq.
For the NPMHU:	Matthew Clash-Draxler, Esq.
Place of Hearing:	Washington, D.C.
Date of Hearing:	December 19, 2014
Date of Award:	July 2, 2015

Relevant Contract Provisions: Article 10.2, Article 19 and Appendix B

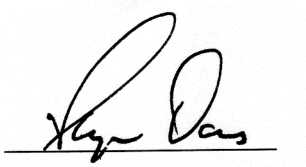
Contract Year: 2011-2016

Type of Grievance: Contract Interpretation

Award Summary:

The grievance is resolved on the basis of the following determination:

Section 512.313 of the ELM requires that former City Carrier Assistants who have completed ninety days of continuous employment without a break in service must complete a 90-day qualifying period following their conversion to career status before they may be credited with or may take annual leave.



Shyam Das, Arbitrator

This grievance was filed by the NALC on February 14, 2014. This national level interpretive dispute originated in the Portland, Oregon Post Office, and involves the right of former City Carrier Assistants (CCAs) to use annual leave following their conversion to full-time career status. The grievants all were former CCAs who requested scheduled annual leave after they were converted to full-time career positions. The leave initially was approved by local management, but subsequently was converted to leave without pay. The Postal Service based its decision on Section 512.313(b)(1) of the Employee and Labor Relations Manual (ELM), which states that: "New employees are not credited with and may not take annual leave until they complete 90 days continuous employment under one or more appointments without a break in service." The parties settled the underlying grievance and agreed that the facts of the underlying grievance are not at issue in this arbitration. The question presented to the Arbitrator here is an interpretive one involving only the 90-day qualifying period requirement in ELM section 512.313.

Both the APWU and the NPMHU intervened in this arbitration. Each has a similar classification to CCAs, and their respective National Agreements include similar applicable provisions.

The CCA classification was created by the 2013 Interest Arbitration Award and replaced the previous noncareer work force in the letter carrier bargaining unit known as transitional employees (TEs). The Interest Arbitration Award explained that the CCA workforce "is comprised of noncareer, city letter carrier bargaining unit employees" who "shall be hired for terms of 360 calendar days and will have a break in service of five days between appointments." The Award also provided that the "phasing out of the transitional employee category will occur within 90 days of the effective date of this Agreement." The Award represented a significant benefit to the Postal Service, but also provided a path to career appointment for members of the new noncareer complement and converts the career letter carrier workforce to essentially one hundred percent full-time status.

NALC Vice President Lew Drass testified all career hiring before the Award was based on competitive examination and appointment from a hiring register, but that procedure has fundamentally changed since the Award. The Postal Service still administers a test for

applicants, but the test is used to construct hiring registers for CCA positions. After the CCAs are appointed, they are given "relative standing" which is determined by original CCA appointment to the installation, adding time served as a city letter carrier transitional employee for appointments made after September 29, 2007 in any installation. The CCAs relative standing is then used to convert CCAs to available career positions. Drass described the conversion process from the employee's perspective as follows: "[Y]ou're a CCA on Friday, you go home as a noncareer. On Saturday you come back, and you're a full-time career."

Relevant Provisions of the applicable 2011-2016 National Agreement include the following:

ARTICLE 10
LEAVE

* * *

Section 2. Leave Regulations

The leave regulations in Subchapter 510 of the Employee and Labor Relations Manual, insofar as such regulations establish wages, hours and working conditions of employees covered by this Agreement, shall remain in effect for the life of this Agreement.

* * *

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.

* * *

Article 19 shall apply in that those parts of all handbooks, manuals and published regulations of the Postal Service, which directly relate to wages, hours or working conditions shall apply to CCA employees only to the extent consistent with other rights and characteristics of CCA employees provided for in this Agreement. The Employer shall have the right to make changes to handbooks, manuals and published regulations as they relate to CCA employees pursuant to the same standards and procedures found in Article 19 of the National Agreement.

Relevant Provisions of the ELM include the following:

363 Conversions

363.1 Definition

Conversion refers to the process of changing a noncareer employee's status to a career appointment in one personnel action. The selected noncareer employee should not be separated and then given a career appointment unless the employee's appointment expires before the employee can be converted to career status....

* * *

510 Leave

511 General

511.1 Administration Policy

The Postal Service policy is to administer the leave program on an equitable basis for all employees, considering (a) the needs of the Postal Service and (b) the welfare of the individual employee.

* * *

512 Annual Leave

* * *

512.3 Accrual and Crediting

512.31 Employee Categories

512.311 Full-Time Employees

The following provisions concern full-time employees:

* * *

b. *Credit at Beginning of Leave Year.* Full-time career employees are credited at the beginning of the leave year with the total number of annual leave hours that they will earn for that leave year.

* * *

512.313 Appointees

The following provisions concern appointees:

a. *Rate of Leave Accrual.* The rate of leave accrual for a new career employee (whether appointed, reinstated, or transferred) *is determined promptly as soon as related facts are verified.* It is based on creditable service, both civilian and military (see 512.2).

b. *Ninety-Day Qualifying Period.*

(1) *Requirement.* New employees are not credited with and may not take annual leave until they complete 90 days of continuous employment under one or more appointments without a break in service.

Exception: This requirement does not apply to (a) career (or career conditional) employees who have had a minimum of 90 days of continuous federal service prior to transferring, without a break in service, to a Postal Service career position (see 512.812 and 512.91) or (b) substitute rural carriers or RCAs who are in a leave-earning status and convert to a Postal Service career position without a break in service.

(2) *Break in Service.* A break in service of 1 or more workdays breaks the continuity of

employment. Any further employment requires beginning a new 90-day period. (For substitute rural carriers and RCAs, see 512.552.)

* * *

The parties stipulated to the issue: Whether Section 512.313 of the ELM requires that former City Carrier Assistants who have completed ninety days of continuous employment without a break in service must complete a 90-day qualifying period following their conversion to career status before they may be credited with or may take annual leave?

NALC POSITION

The NALC argues that ELM 512.313 does not prohibit recently converted career employees from taking annual leave where they have completed 90-days of continuous service as CCAs. The wording of ELM 512.313 indicates an exception that fits the old hiring system for career employees. Before the 2013 Interest Award, individuals appointed from a hiring register based on a test score clearly were "new employees" and thus could not be credited with or use their annual leave until they had completed 90 days of service. However, the wording of ELM 512.313 does not fit former CCAs converted to career status under the current National Agreement. The NALC contends that these converted CCAs are not new employees and that they have all been continuously employed by the Postal Service at the time of their conversion. Moreover, the plain language of paragraph (b)(1) allows the employees' service as CCAs to count toward the 90-day requirement and does not limit qualifying service to service under the employee's current appointment; the 90 days may be satisfied by service under one or more appointments, so long as there is no break in service.

The NALC stresses that ELM 512.313(b)(1) does not include the word "career." The NALC argues that there is no evidence that the original purpose of the 90-day qualifying period requires that the present ELM language be read as if it refers exclusively to career appointments. The present ELM provision derives from regulations first promulgated by the old

Post Office Department to implement the Annual and Sick Leave Act of 1951. The pertinent regulation in the 1952 edition of the Post Office Manual says:

> New appointee.—Section 203(i) of the Annual and Sick Leave Act of 1951 provides that employees, including temporary rural carriers, shall be entitled to annual leave only after having been employed currently for a continuous period of 90 days under one or more appointments without a break in service.

The NALC maintains that the statement in the Manual that the term "employees" includes "temporary rural carriers" plainly shows that the 90-day qualifying period in its original incarnation applied equally to noncareer as well as career appointments. Additionally, the NALC contends that its exhibits show that the regulation was carried forward by the Postal Service and eventually incorporated into the ELM without any substantive revisions. Therefore, there is no reason to read the present ELM language as incorporating a different meaning than that of the original 1952 version which did not differentiate the application of the 90-day requirement between career and noncareer appointments.

The NALC points out that Section 512.313(b)(1) does not refer to 90 days of continuous career employment under one or more career appointments, but rather it requires 90 days of continuous employment so long as there is no break in service. The NALC asserts that since there is no break in service when a CCA is converted to career status, the employee's service before and after the conversion is continuous and should satisfy the literal language of the ELM provision. Furthermore, the NALC argues that ELM language is typically precise, thus the absence of the modifier "career' in Section 512.313(b)(1) signals that any postal employment will satisfy the 90-day requirement. The rule's original incarnation did not differentiate between career and noncareer, nor has the Postal Service sought to revise the language in succeeding editions of the ELM.

The NALC also disputes the Postal Service's argument under the doctrine of *expressio unius est exclusio alterius*. The language of ELM 512.313 was drafted long before the CCA classification and the contractual right to conversion was created in the 2013 Interest Award. Thus, the absence of any reference to former CCAs in the exceptions enumerated in

the ELM is irrelevant to the interpretive question in this case. In fact, the NALC suggests that the ELM's reference to the two exceptions supports its position because it shows that there is no practical or other reason for requiring employees who have been employed by the Postal Service or the federal government for more than 90 days in a leave earning capacity to satisfy a new, arbitrary 90-day qualifying period in order to use annual leave.

Finally, the NALC stresses that the Postal Service failed to prove its claim that the previous category of noncareer employees in the letter craft, TEs, were also required to serve a 90-day qualifying period following their appointment to career positions. In any event, the comparison is of no significance because, unlike CCAs, TEs did not have a path to career employment. A TE seeking career employment was required to take an exam like any other member of the public at large. TEs could only be hired off a register, as new employees, based on their test score. The NALC contends that this process is not analogous to a CCA who is converted to career status during an uninterrupted course of postal employment. Moreover, a former TE hired as a career letter carrier typically would have been assigned to a part-time flexible position, like any other new hire, because the previous National Agreement did not provide for the phasing out of part-time positions in the letter carrier craft. A former TE would not have been fronted his full year's annual leave in advance, thus there would have been no cause for the NALC to complain about former TEs being required to satisfy a 90-day qualifying requirement.

NPMHU POSITION

The NPMHU supports the arguments made by the NALC. It explains that there is a bargaining unit position within the Mail Handler craft called the Mail Handler Assistant (MHA). Like CCAs, MHAs are noncareer bargaining unit employees who are hired for terms of 360 days with a break in service of five days between appointments. MHAs replaced some noncareer employees known as casuals (a position that did not entitle the employee to annual leave) and some career part-time flexible employees (who did earn annual leave). Moreover, the NPMHU points out that its National Agreement mandates, like the NALC National Agreement, that "[w]hen the Postal Service hires new mail handler full-time career employees,

MHAs within the installation will be converted to full-time regular career status to fill such vacancies based on their relative standing in the installation, which is determined by their original MHA appointment date in that installation. Accordingly, the NPMHU contends that, like CCAs who are converted to career status, MHAs who have already worked for 90 days and who are converted to career status are not new employees and therefore, should be permitted to take annual leave.

The NPMHU argues that the plain language of the ELM and Section 512.313(b)(1)'s historical antecedent, the Annual and Sick Leave Act of 1951 and the pertinent regulation in the 1952 edition of the Postal Office Manual do not support the Postal Service's proposed interpretation. The NPMHU urges the Arbitrator to look to the rationale he applied in Postal Service and APWU Case No. I90C-1I-C 910325156, H7C-4S-C 29885 (Das, 2005), where he held that the historical precedent for a present term or condition of employment "provides a solid basis on which to conclude" that the parties intended to interpret the term as it had been. The NPMHU asserts that the same rationale if applied here would compel the Arbitrator to determine that the plain language of the ELM cannot be interpreted as requiring former MHAs converted to career status to wait 90 days before being credited or taking annual leave.

The NPMHU also points out that ELM 511.1 states that Postal Service policy is to administer the leave programs on an equitable basis for all employees. Interpreting ELM 512.313(b)(1) as not applying the 90-day qualifying period to career and noncareer employees who already have completed 90 days of continuous employment under one or more appointments without a break in service is compelled by this policy; the Postal Service has offered no rational basis for the distinction it is attempting to draw. See Postal Service and APWU Case No. Q90C-6Q-C 94042619 (Das, 1988).

APWU POSITION

The APWU supports the NALC's position in this case. It explains that the conversion mechanisms for the Postal Support Employees (PSEs), the CCA equivalent in the

APWU bargaining unit, are slightly different, but the concept of the PSE career path is the same. Similar to CCAs, the hiring of career employees in the APWU crafts is accomplished through conversion of PSEs to career positions and gives the Postal Service a pipeline of experienced and trained postal employees to convert directly into career positions rather than appointing them as career hires off of a hiring register. Also, similar to CCAs, the PSE path to career is a requirement for achieving career employment unlike the general opportunity to apply for career vacancies that existed for casuals or TEs. Thus, CCAs and PSEs who are converted to career are neither new postal employees nor former temporary workers who had no expectation of career employment with the Postal Service.

The APWU argues that CCAs and PSEs are not fairly categorized as new employees under ELM 512.313(b)(1) and that the existing exceptions in this provision of the ELM -- former federal employees and RCAs -- illustrates the Unions' position. New career employees who are not new to federal service or are continuing in their postal service do not have to earn the right to use their annual leave. Additionally, the Postal Service cannot articulate any legitimate purpose for imposing an additional 90-day requirement on CCAs, PSEs and MHAs who already have fulfilled the 90-day requirement in the continuation of their postal employment. The APWU asserts that, like the existing exceptions to the ELM's rule, CCAs, PSEs, and MHAs, can acquire the requisite time during their tenure to satisfy both the requirement of and rationale behind ELM 512.313(b)(1) upon continuing their employment through conversion to career positions.

POSTAL SERVICE POSITION

The Postal Service argues that ELM 512.313(b) applies to new career employees and requires a new career city carrier to complete a 90-day qualifying period before being credited with or taking annual leave, even if the carrier previously worked as a noncareer CCA. Although the word "career" does not appear in ELM 512.313(b), the Postal Service stresses that it is clear that this subsection applies only to new career employees. Indeed, the only employees to whom ELM 512.313(b) could apply are career employees. Employees in the Postal Service fall into one of two categories: career and noncareer and only career employees

are subject to ELM 510. According to the Postal Service, noncareer bargaining unit employees are subject to leave rules contained in the various National Agreements, rather than ELM 510.

Additionally, the Postal Service contends that the application of the interpretive doctrine of *noscitur a soccis* (a word is known by the company it keeps) shows that ELM 512.313(b) applies to career employees even though the word "career" does not appear. ELM 512.313 must be read as a whole. ELM 512.313(a), which immediately precedes the subsection on the 90-day qualifying period requirement, explicitly addresses the "rate of leave accrual for a new career employee." Therefore, the Postal Service argues that by reading ELM 512.313 holistically, one can reasonably infer that subsection (b), like subsection (a), is applicable to new career employees.

The Postal Service argues that CCAs who convert to career status are new career employees who are subject to the requirements in ELM 510 for purposes of annual leave usage. The NALC is conflating the distinct set of annual leave provisions that apply separately to noncareer CCAs and those that apply to career city carriers. The annual leave rules for career city letter carriers are found under Article 10 of the National Agreement, which incorporates ELM 510 into the National Agreement, while the annual leave rules for CCAs are found in the NALC National Agreement at Appendix B.3 and make no reference to ELM 510. It is only after a CCA is converted to a career city carrier that the annual leave rules in Article 10 and ELM 510 apply to these employees, making the former CCA a new employee, who is, for the first time, subject to ELM 510.

ELM 512.313(b) contains two exceptions to the 90-day qualifying period requirement, neither of which applies to newly converted CCAs. If, as the NALC argues, previous service as a noncareer postal employee can satisfy the 90-day qualifying period, the Postal Service also stresses there would have been no need to include an exception for RCAs in a leave-earning status.[1] The Postal Service further contends that another canon of contract

[1] The Postal Service notes that an RCA who is in a leave earning capacity serves a 90-day qualifying period before they begin to earn leave. The exception exempts them from having to serve another qualifying period.

interpretation, *expressio unius est exclusio alterius* (the express mention of one thing excludes all others), provides that when a text lists exceptions to a general rule, the general rule should be interpreted to include those items not covered by the stated exceptions.

The Postal Service maintains that its position is consistent with the parties' established practice. TEs, the CCAs noncareer predecessors, were not subject to ELM 510, and thus did not have to complete a 90-day qualifying period requirement during their noncareer appointments to earn and use annual leave. Additionally, like converted CCAs, when TEs were appointed to career status, they were required to complete the 90-day qualifying period in ELM 512.313. The Postal Service asserts that when the CCAs replaced TEs in the latest National Agreement, the TEs were phased out and subsequently, the leave rules that now govern CCAs mirror those that once governed TEs. Except for a few non-substantive changes, the parties carried forward the noncareer leave rules verbatim, which explains why, like the TEs before them, CCAs earn annual leave immediately and are eligible to take that leave as soon as they earn it. Also, just like TEs, CCAs cannot carry annual leave over to their next CCA appointment and are paid out their accrued annual leave upon their conversion to career status.

The Postal Service argues that the NALC has not claimed that former TEs who later received career appointments were exempt from the 90-day qualifying period requirement, however, it incorrectly claims that former CCAs are exempt from that same 90-day requirement. Since the NALC cannot point to any change in the leave rules that would suggest such a policy shift, the Postal Service urges the arbitrator to presume that the parties intended to maintain the existing noncareer leave rules and policies. CCAs should be treated just like TEs were treated, rather than creating a new policy, as the NALC is requesting.

Finally, the Postal Service insists that its position is equitable because its requirements apply to all new career employees who do not qualify under one of the explicit exceptions. It distinguishes Postal Service and APWU Case No. Q90C-6Q-C 94042619 (Das, 1998), cited by the NPMHU in support of its argument that the Postal Service's position is inequitable. In that case, the Arbitrator found that the Postal Service violated ELM 511.1 when it extended administrative leave to some employees, but not others, during a national day of

mourning for the late President Nixon. The Postal Service points out that the Arbitrator explained that in "the absence of any detailed provisions explicitly applying to situations such as the Nixon day of mourning," ELM 511.1 was "particularly significant." The Postal Service distinguishes this case because there is a detailed provision that explicitly applies—ELM 512.313(b). Additionally, the Postal Service points out that this case is purely an interpretive case about the facial meaning of a single provision of the leave system, rather than the application of its leave program to any particular set of facts.

FINDINGS

Under Article 10 of the NALC National Agreement, the applicable leave provisions of Subchapter 510 of the ELM are incorporated into the National Agreement. As written, the applicable provisions in Section 512.313 of the ELM, which govern annual leave entitlement for career letter carriers do not support the NALC's (and other Unions') position in this case.

Initially, I note that while the 90-day qualifying period in Section 512.313(b)(1) may derive from Postal regulations dating as far back as 1952, there have been changes over the years as reflected in NALC Exhibits 5-10. The 1978 version (ELM Issue 2) is very similar to the 1952 edition of the Postal Manual cited by the Unions. The 1982 version (Issue 7) includes a provision similar to the current 512.313(a), except that it references "a new employee," rather than "a new career employee." In the 1999 version (Issue 14) Section 512.313(a) does refer to "a new career employee" and substantively is equivalent to the current provision. Section 512.313(b) of the 1999 version -- which addresses the 90-day qualifying period -- includes the first exception now found in that provision -- which does not appear to have been included in prior ELM versions in the record. The second exception for "substitute rural carriers or RCAs who are in a leave-earning status and convert to a Postal Service career position without a break in service" does not appear in the 1999 version, but is included in its present format in the 2000 version (Issue 16). Under these circumstances, I am not persuaded that the historical antecedents provide much useful elucidation on the relatively narrow issue to be decided here.

It is clear from 512.313(a) that this section of the current ELM applies to annual leave for career employees. (The National Agreement includes separate provisions governing annual leave for CCAs.) The 90-day qualifying period in 512.313(b)(1), like the rest of this section, applies only to career employees. The provision that "new employees" may not use annual leave until they complete 90 days of continuous employment without a break in service logically applies to new career employees since they are the only "employees" whose annual leave is subject to this provision. The wording of 512.313(b)(1) contemplates a future act -- "until they complete 90 days of continuous employment." (Emphasis added.)

This conclusion is only strengthened by the express exception to the 90-day qualifying period for "substitute rural carriers or RCAs who are in a leave-earning status [which requires 90 days of service in that capacity] and convert to a Postal Service career position without a break in service." Under the NALC's reading of the general rule in 512.313(b)(1), there would be no need for such an exception. The analogy to a CCA who is in a leave-earning status -- at least one who has completed 90 days of service as a CCA -- and converts to a career position without a break in service hardly could be closer or more direct. The only difference I discern, but it is a mighty one, is that 512.313(b)(1) makes an exception for the substitute rural carrier or RCA, but not for the CCA.[2]

This is not a case like my 1998 Nixon Day of Mourning decision cited by the NPMHU in which I applied ELM 511.1. Here, unlike in that case, there are detailed ELM provisions addressing the issue at hand.

On the present record, it is not evident that from a policy or equity perspective there is any significant reason not to treat CCAs in a similar manner to substitute rural carriers or RCAs covered by the exception in 512.313(b)(1), but the 2013 Interest Arbitration Award --

[2] While the evidentiary record is somewhat sparse in this regard, it appears that TSEs, who were replaced by CCAs, likely did have to serve a 90-day qualifying period under this provision upon becoming career employees. The NALC stresses that such TSEs were hired off a registry, rather than being entitled to conversion in the same manner as are CCAs, although it is not clear to me whether this involved a break in service. If not, their situation as "new employees" appears similar to a converted CCA. But I only point this out, and do not base my decision on any practice relating to TSEs.

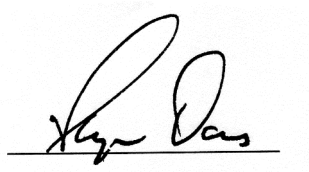
which includes fairly detailed provisions relating to the newly created CCA bargaining unit position, including conversion to career status, does not provide for -- and the parties have not subsequently agreed to -- this result. Grievance arbitration is not the appropriate process for effecting the necessary change.

Accordingly, I conclude that the Postal Service's position in this case must prevail under the terms of the parties' National Agreement. The same conclusion applies with respect to MHAs and PSEs represented, respectively, by the NPMHU and the APWU.

AWARD

The grievance is resolved on the basis of the following determination:

Section 512.313 of the ELM requires that former City Carrier Assistants who have completed ninety days of continuous employment without a break in service must complete a 90-day qualifying period following their conversion to career status before they may be credited with or may take annual leave.



Shyam Das, Arbitrator