



The Four Winds

National Weather Service Employees Organization

FLRA Rejects NWS Efforts to Restrict Court Leave – Affirms Arbitrator’s Award

(April 18, 2014) The Federal Labor Relations Authority has affirmed the 2013 decision of Federal Labor Arbitrator Joshua Javits who ruled that the NWS violated Article 19, section 11 of the NWSEO collective bargaining agreement when it denied Robert Ruehl, the NWSEO steward and OPL at WFO Eureka, court leave on a holidays and on weekends during jury service in July, 2012. The FLRA’s decision, issued on Wednesday, April 16, rejected all the arguments the NWS raised in its appeal. Most importantly, the FLRA rejected the NWS’s claim that granting Mr. Ruehl court leave on a holiday and on the weekend violated Comptroller General decisions, and even noted that “the Agency effectively concedes” that the court leave statute “permits granting the grievant court leave on the three dates in question.”

In his original June, 2013 decision, Arbitrator Javits wrote that the agency’s interpretation of the court leave provision in the NWS- NWSEO collective bargaining agreement “would effectively render [Article 19, section 11] meaningless.”

The case arose when Mr. Ruehl was summoned for jury duty that ran from Monday, June 25 through Wednesday, July 11. He was denied court leave for scheduled shifts on Sunday, July 1 and Wednesday, July 4 because the court did not meet those days. According to Arbitrator Javits, Mr. Ruehl was entitled to court leave for **all** shifts between the date his jury service began and the date it ended. He ruled that the agency violated the second sentence of Article 19, section 11, which reads:

“An employee eligible for court leave shall be granted court leave to serve on a jury for the entire period of service, extending from the date on which he/she is required to report to the time of discharge by the court.”

Mr. Ruehl was required to report for jury duty on two of his scheduled days off: Monday, July 9 and Tuesday, July 10. He therefore claimed court leave for the following Saturday, July 14, pursuant to the last sentence of Article 19, section 11, (as amended in October 2011) which reads:

“Employees whose regular tour of duty includes Saturdays, Sundays or both, and who serve on a jury during the week, may be granted court leave and be paid premium pay for the weekend days which are a part of their regular tour of duty.”

Upon advice from Western Region, Mr. Ruehl’s MIC denied him court leave for the following Saturday on the grounds that this provision says that court leave “may” be granted in these circumstances, and they the agency could deny court leave under these circumstances anytime it wished. The union argued that as used in § 11, “may” means “to have permission to” or “to be allowed or permitted to.” To the extent that it is discretionary, NWSEO explained, its use is at the discretion of the recipient upon fulfillment of a predicate condition, as in “if you work late on Thursday, you may have Friday off” or “if you eat your peas, you may have dessert.” Arbitrator Javits agreed with the union and rejected the NWS’s constrained reading of the contract, writing that “to allow Agency management to say it can decide whether or not a rotating employee should be granted court leave at all would eliminate the parties’ agreement.”

The Arbitrator ordered the NWS to either pay Mr. Ruehl for the three days that it denied him court leave or grant him three days of court leave at a later weekend date. The NWS appealed the remedy that the Arbitrator issued Mr. Ruehl, but the FLRA rejected this aspect of the agency’s appeal because the NWS failed to object to this requested remedy during the arbitration case. “Here, the Arbitrator granted the very relief that the Union requested in its brief, and there is no indication that the Agency opposed the Union’s remedial request before the Arbitrator, despite having an opportunity to do so.”

There was no evidence at the hearing, that in the twenty or so years that this contractual provision has been in effect, that any other employee was denied court leave under these circumstances. It became clear that management provoked this grievance and forced it to arbitration in an unsuccessful effort to cut back on employees’ entitlement to court leave.

-NWSEO-

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National Weather Service employees.**

**No one works harder for National Weather Service employees than
National Weather Service employees.
We are NWSEO.**