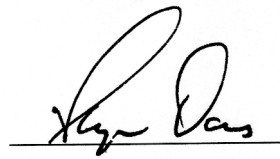




Award Summary:

Accordingly, this grievance must be denied.

A handwritten signature in black ink, appearing to read "Shyam Das", is written over a horizontal line.

Shyam Das, Arbitrator

On July 14, 2008, the Union initiated this dispute. At the hearing on December 17, 2015, the parties presented statements of the issue and gave the Arbitrator authority to frame the precise issue. The Union articulated the issue as whether the Postal Service violates Article 6 when it does not comply with the terms of Article 6 when offering voluntary early retirement. The Postal Service articulated the issue as whether Article 6.B.4 requires the payment of severance pay whenever employees accept an offer of voluntary early retirement. After review of the moving papers, I find the issue to be:

Whether the National Agreement requires the payment of severance pay when an employee accepts an offer of voluntary early retirement (VER) in conjunction with the Postal Service effecting a reassignment under Article 12, as it would if the offer was made in conjunction with a reassignment or, if necessary, layoff and reduction in force under Article 6.B.4.

Article 6, which is entitled "No Layoffs and Reductions in Force," sets forth in Section B "Preconditions for Implementation of Layoff and Reduction in Force." Section B.4 provides as follows:

Before implementation of reassignment under this Article or, if necessary, layoff and reduction in force of excess employees within the installation, the Employer will, to the fullest extent possible, separate all casuals within the craft and minimize the amount of overtime work and part-time flexible hours in the positions or group of positions covered by the seniority unit as defined in this Agreement or as agreed to by the parties. In addition, the Employer shall solicit volunteers from among employees in the same craft within the installation to terminate their employment with the Employer. Employees who elect to terminate their employment will receive a lump sum severance payment in the amount provided by Part 435 of the Employee and Labor Relations Manual, will receive benefit coverage to the extent provided by such Manual, and, if eligible, will be given the early retirement benefits provided by Section 8336(d)(2) of Title 5, United States Code and the regulations implementing that statute.

Article 12 which is entitled "Reassignment," includes provisions related to reassignment of employees within an installation and outside an installation. There is no

provision for severance pay in Article 12 and no specific reference therein to early retirement benefits.

Article 21.3 addresses retirement as follows:

The provisions of Chapters 83 and 84 of Title 5 U.S. Code, and any amendments thereto, shall continue to apply to employees covered by this Agreement.

Chapter 83 of Title 5 U.S. Code addresses the Federal Employee Retirement System (FERS). Chapter 84 of Title 5 U.S. Code addresses the Civil Service Retirement System (CSRS).

Article 6 in its current form first was included in the 1978 National Agreement following the Healy Interest Arbitration Awards issued in 1978 and 1979.<sup>1</sup> The parties agree that an employee who voluntarily terminated his employment under the procedure set forth in Article 6.B.4 by taking an early retirement offered under FERS or CSRS would be entitled to severance pay.

Robert C. Brenker, former Manager, Strategic Complement Reassignment, at Postal Service Headquarters, was the sole witness at the hearing. Brenker was responsible for all changes in bargaining unit complement, including both voluntary and involuntary reassignments prior to his then anticipated retirement on January 30, 2016. He served as the Postal Service's Article 12 person at the national level since 1992 and was also the point person for Article 6 matters. Brenker recalled that he was involved in every decision to offer VER in the ten years preceding the hearing on this matter.

Brenker explained that Article 12 is used to reassign career bargaining unit employees from a section, craft and/or installation when it is determined there is an excess number of employees. He testified that there are various preconditions that the Postal Service

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<sup>1</sup> Prior to the Healy Awards, Article 6 precluded involuntary layoff of employees in the regular work force. The 1978 National Agreement provided for layoff only of employees hired thereafter with less than six years of service. In subsequent National Agreements the parties have extended no layoff protection to employees employed as of the effective date of the Agreement.

is required to follow when utilizing Article 12, which include notice to the Union, and the employees, as well as reductions in non-career work hours, overtime, and part-time flexible work hours "to the extent possible." There is a process for implementing reassignments under Article 12 and no employees are separated or demoted, either by layoff or RIF (reduction in force).<sup>2</sup> All employees are placed in a job and maintain their same grade and pay and have "retreat" rights.

Brenker asserted that Article 6 contains the criteria for determining which employees are protected from being subject to layoff, as well as the procedures the Postal Service must use when implementing a layoff. Brenker said that a great majority of employees in the bargaining unit are protected from layoff. Indeed, he noted that there never has been a layoff under Article 6. Article 6 has different preconditions than Article 12, including the provision that requires the reduction of non-career, overtime, and part-time flexible work hours "to the fullest extent possible." One of the preconditions for implementing layoffs is that the Postal Service will solicit volunteers to terminate their employment and that such volunteers will receive severance pay in an amount provided in Employee and Labor Relations Manual (ELM) 435. Employees who volunteer to terminate their employment also will receive benefit coverage as provided in the ELM, as well as VER benefits if statutorily eligible.

Brenker stated that career bargaining unit employees participate in one of two federal government retirement programs, the Federal Employees Retirement System (FERS) or the Civil Service Retirement System (CSRS), both of which are defined benefit plans administered by the U.S. Office of Personnel Management (OPM). The rules and benefits of these programs are a matter of federal law and regulation set by Congress and OPM. Early retirement is permissible in FERS and CSRS, but it requires OPM approval and must be offered only in circumstances where the work force is being significantly restructured and/or reduced. The VER provisions are found within 5 U.S.C. § 8336 (CSRS) and § 8414 (FERS).

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<sup>2</sup> Brenker explained that a "layoff" is a nondisciplinary separation of a nonprotected nonpreference-eligible employee. An "RIF" is a nondisciplinary separation of a nonprotected veterans-preference eligible employee. Hereinafter, the term "layoff" will be used to encompass both layoff and RIF.

Brenker explained that under the statutes there are three separate criteria, any one of which would support a VER approval decision from OPM. These three criteria are: 1) that the requesting organization is undergoing "substantial agency delayering, reorganization or other restructuring;" 2) that there is "a likely need to separate or demote employees;" or 3) "there are positions that are becoming surplus or excess to [the agency's] future needs." Brenker testified that the Postal Service has made requests to OPM for approval to offer VERs based on the need to implement work force restructuring and reshaping and the desire to minimize involuntary reassignments. He added that the Postal Service never has requested VER authorization from OPM based on the need to separate or demote bargaining unit employees, although it has done so in the case of non-bargaining unit employees where there is no equivalent procedure to Article 12. Brenker provided supporting documentation of various Postal Service requests made to OPM for VER authority between 2004 and 2009.

#### APWU POSITION

The Union argues that severance pay is required when employees accept early retirement offered by the Postal Service as part of an overall effort to reduce the employee complement. The Union stresses that no matter how the Postal Service intends to reach its goals for reducing the size of the employee complement, whether through layoffs under Article 6 or reassignment under Article 12, the early retirement it offers in these circumstances must be accompanied by severance pay. The Union's position is that no matter whether the Postal Service plans to run a layoff under Article 6 or reassign employees under Article 12, the National Agreement requires that "excess employees' who retire early are entitled to severance pay for voluntarily giving up their jobs in furtherance of the Postal Service's efforts to reduce the employee complement.

The Union points out that the bargaining history of Article 6 shows the priority the Union put on easing the impact on employees when the Postal Service undertakes employee reductions. Article 6 was one of only two issues the parties took to interest arbitration in 1978. The focus at that time was exclusively on layoffs because during that time and the succeeding years, the Postal Service invoked Article 6 layoffs whenever it needed to reduce the work force.

Although the Union acknowledges that the language of Article 6 ties severance pay to the process of Article 6, it explains that 35 years ago Article 12 reassignments were used by the Postal Service in such a way that they were distinguishable from and less severe than a layoff. The Postal Service did not refute the Union's evidence that the intent behind severance pay in Article 6 was related to mitigating the overall impact of reducing the complement, not specifically only running a layoff. Furthermore, at the time the Article 6 language was added by Arbitrator Healy, the evidence suggests that layoffs were the exclusive method of reducing the complement, whereas reassignments, on their own, were a method for accomplishing what were, at the time, more moderate staffing and restructuring goals.

The Union contends that the Postal Service made an internal decision to use a different method for reducing the complement, by using Article 12 for reassignments and suspending the use of the established layoff process of Article 6. According to the Union, this internal change in the process should not affect the protections put in place for separated employees. By using this process, the Postal Service is using the threat of reassignment rather than layoff to drive employees towards early retirement. There is no evidence that the Union ever agreed that the Postal Service could use Article 12's process to reduce the complement and avoid the severance pay entitlement. Rather, the Union expected that all VERs, which for almost thirty years occurred only as part of a layoff under Article 6, included the severance pay entitlement.

The Union asserts that there is no longer a meaningful distinction between Article 6 layoffs and Article 12 reassignments. The Union points to what it terms a natural incongruity in the idea of the Postal Service reducing the number of employees by reassigning them. It says that this speaks to two points about the current practice of using Article 12 that supports its position. First, for reassignment to be an effective motivator for an employee to take early retirement suggests that reassignments are now viewed to be as harsh as layoffs. Second, in a reassignment situation, early retirement is fundamentally critical to accomplishing the Postal Service's overall complement reduction goals. The Postal Service needs early retirement in order to reliably reduce, rather than reassign, the number of employees it states as its goal in its VER requests. The intent of the parties was to mitigate complement reductions for employees

and it should be affirmed and brought into the present, by requiring severance pay for employees who retire early, whether under Article 6 or Article 12.

The Union suggests that the relevant inquiry here is the nature of the situation, not the process. Therefore, severance pay should be owed to an employee retiring early in the context both of a layoff and an involuntary reassignment. The Union stresses that the Postal Service only offers early retirement when it is reducing the size of the employment complement. It provides examples of the Postal Service's requests of OPM that show it is using the threat of involuntary reassignment not only to move employees around, but also principally to move them out of the work force.

The Union contends that the Postal Service is attempting to make an end run around entitlement to severance pay simply because it finds it administratively more convenient to involuntarily reassign employees rather than process layoffs. Article 12 is silent on severance pay, but the Union argues that cannot be controlling. Article 12 is also silent on retirement, not because the parties tried and failed to reach an agreement on how retirement fits in with excessing and reassignments, but because the Postal Service is using the Article in a way that was not originally intended by the parties. The parties negotiated Article 6 in relation to restructuring and reducing the work force, while Article 12 is a process of reassignment. The Union points out that separation is not assumed under Article 12, but the Postal Service is coupling separation concepts with reassignments. Given the commonalities in purpose and application with Article 6, the Union contends that Article 12 should be read as incorporating VER terms from Article 6 to make Article 12 consistent with the rest of the National Agreement. To do otherwise denies employees of the benefit of the bargain reached by the parties in complement reductions.

The Union argues that employees deserve equity and consistency when retiring early for the Postal Service's benefit, regardless of whether the threat is layoff or reassignment. In situations of layoff or reassignment, bargaining unit employees bear a larger hardship and burden than the Postal Service. In a situation of involuntary reassignment, the Union stresses, often a reassignment cannot be accomplished in close proximity to an employees' facility, so it



often entails considerable cost, disruption and the stress of moving jobs and homes. Additionally, if the employee is reassigned out of craft, layoff protection may disappear and the new job may be only a brief reprieve before separation.

The Union also stresses that early retirement is not a windfall. It does not increase one's annuity, but spreads the same amount out over more time. Severance pay acts like unemployment compensation and can ease the transition to retiring early. The Union asserts that it is less of a hardship for the Postal Service and can possibly help the Postal Service realize both a reduction of the complement and overall savings because paying one year of pay to the newly retired can potentially eliminate several more years of active duty compensation.

The Union argues that severance pay can help the Postal Service achieve its goals by encouraging employees to take early retirement. Whether under Article 6 or Article 12, equal application of severance pay to all VERs will truly reduce the complement and encourages the outcomes the Postal Service is seeking. According to the Union, the Postal Service's change in its methods, from layoff to reassignment, should not fall all on the employees whose jobs are already at risk.

#### POSTAL SERVICE POSITION

The Postal Service argues that the contractual language does not provide for severance pay in all circumstances when an employee accepts a VER. Article 6 establishes the requirements for career employees to receive protection from layoffs and the procedures which the Postal Service is obliged to follow when effectuating layoffs, but does not require payment of severance pay whenever an employee accepts a VER. The Postal Service acknowledges that under certain circumstances pursuant to Article 6.B.4 an employee will receive severance pay and may be eligible for VER benefits. However, that does not mean that every time an employee receives a VER, he or she necessarily is entitled to severance pay. Entitlement to severance pay is based on the employee agreeing to terminate their employment pursuant to the solicitation required in Article 6.B.4, whether or not they are eligible for a VER.

The Postal Service stresses that to determine whether an employee is entitled to severance pay the question is: "What are the circumstances under which the VER is offered?" If an employee is offered and accepts a VER for reasons that are unrelated to the provisions of Article 6, then there is nothing in the last sentence of Article 6.B.4 that requires payment of severance pay simply because the employee receives a VER.

The Postal Service contends that the Union is attempting to steer the focus away from the actual contractual language at issue and instead asks the Arbitrator to consider the "overall intent" and "purpose of Article 6." While it is true that Article 6 is a means for the Postal Service to address work force restructuring and that VERs are intended to assist the Postal Service in the restructuring of its work force, there is nothing to suggest that all VERs must be within the ambit of Article 6. Nor is there anything to suggest that employees who receive VER must also receive severance pay because that is the only context in which VER is mentioned in Article 6.

There are other articles that the Postal Service can use when restructuring its work force. Regardless of the Union's arguments about bargaining history, the Postal Service asserts that Article 6 is not some broad-based article comprehensively addressing all issues regarding work force restructuring. Article 6 deals precisely and distinctly with the topic of layoffs and has proved to be of less significance in work force restructurings than Article 12. The Postal Service has used Article 12 to implement the reassignments necessary to carry out restructurings of the work force.

The Postal Service insists that Articles 6 and 12 are not part of an intertwined continuum addressing work force structure issues in some kind of unified way, but are distinct processes which operate separately when the Postal Service chooses to invoke one or the other. The Postal Service chooses Article 6 if it sees the need for layoffs or Article 12 if it decides it can and should achieve its work force restructuring and reshaping goals with transfers and involuntary reassignments. The two Articles do not meld together into a mixed process.

The Postal Service asserts that VERs can be and have been offered even when there is no consideration being given to layoffs. Brenker's uncontroverted testimony is that VER authority can be sought and approved by OPM when an agency is undergoing work force restructuring and reshaping even if no layoffs are being considered. The Postal Service points out that the applicable statutes and OPM implementing guidance support Brenker's testimony and make clear that OPM will approve an agency's VER request when the agency is undergoing substantial work force restructuring, when a significant percentage of employees may be separated, or if the agency has identified excess or surplus positions. 5 U.S.C. § 8336(d)(2)(D)(i-iii) and 5 U.S.C. § 8414(b)(1)(B)(iv)(I-III).

The Postal Service points out that there is significant attrition in its organization and the Postal Service uses Article 12 to involuntarily reassign employees to needed positions within and outside local commuting areas which enables it to promise continued employment to bargaining unit employees even when downsizing nationally. The Postal Service has sought and received VER authority many times without any prospect of layoffs. According to the Postal Service, the parties have a history which supports the conclusion that the Postal Service has requested VER authority from OPM outside of any considerations of layoffs. In 2002-2003, the Union encouraged and reached agreement with the Postal Service to request VER authority from OPM, and the parties subsequently resolved certain disputed VER issues (consistent with the authority received from OPM). The Postal Service does not believe that the Union was encouraging or supporting the Postal Service's utilization of Article 6, nor is Article 6 mentioned in any exhibits relating to the 2002-2003 discussion and agreement. The Postal Service stresses that if it concluded that layoffs were necessary -- which has never happened -- it could invoke the procedures of Article 6, which are separate and distinct from Article 12, and, after certain preconditions were met, some employees might be entitled to the benefits provided in Article 6.B.4, including severance pay and, if eligible, VER benefits. There is no merit, however, to the Union's contention that employees also are entitled to severance pay when they accept a VER in other circumstances when Article 6 is not in any sense being utilized.

## FINDINGS

Prior to the 1978 and 1979 Healy Interest Arbitration Awards, Article 6 simply provided:

### ARTICLE VI NO LAYOFFS OR REDUCTION IN FORCE

It is agreed by the Employer that no employees employed in the regular work force will be laid off on an involuntary basis during this Agreement.

When necessary, reassignments were made pursuant to the procedure set forth in Article 12. In the 1978 negotiations which culminated in the Healy Awards, it was the Postal Service that sought to revise Article 6 to permit layoff of certain employees in certain circumstances. The Union in turn sought certain protections and benefits for affected employees in the event layoffs were to be authorized.

Following the Healy Awards, which were incorporated into the 1978 National Agreement, Article 6 provided -- as it does today -- a procedure under which the Postal Service could effect the layoff of a certain limited group of nonprotected employees for lack of work or other legitimate reasons. Article 6.B sets forth preconditions for implementing layoffs, including steps that the Postal Service must take before implementing reassignment or layoff under Article 6. These prerequisites are similar, but not identical to those applicable to reassignment under Article 12. One difference is that Article 6 provides entitlement to severance pay not only for employees who are separated because of a layoff, but also for employees who volunteer to terminate their employment, in accordance with Article 6.B.4, thereby reducing the need to reassign and/or layoff other employees.

Notably, there is no requirement that in order to elect termination and receive severance pay under Article 6.B.4 an employee be eligible for VER. As the parties agree, Article 6.B.4 does provide that if such an employee is eligible for VER -- which, like retirement in

general, is governed by statute -- the employee is to receive both severance pay and VER benefits.<sup>3</sup>

In his initial 1978 Award, Arbitrator Healy stated that the right granted to the Postal Service in Article 6 to effect layoffs "may be exercised in lieu of reassigning employees under the provisions of Article XII." The provisions of Article XII (now 12) were not changed in connection with the significant modification of Article 6. Article 12, which does not provide a procedure to effect layoffs, makes no provision for severance pay or any reference to early retirement.

Since the 1978 National Agreement took effect the Postal Service frequently has implemented reassignments under Article 12. In some instances, it has done so in the context of substantial reorganization or work force restructuring for which it requested and obtained OPA authority to offer VER. As the Postal Service stresses, VER is not limited to situations where the Postal Service is contemplating layoffs. This is not to deny that in some instances where the Postal Service obtained authorization to offer VER -- as the Union has documented -- the Postal Service intended or anticipated that its exercise of the Article 12 procedure would result in an overall reduction in its work force complement. The record does not show that the Union challenged the Postal Service's right to proceed in those instances under Article 12.

To the extent the Union seems to indicate that at the time of the Healy Awards and for some period thereafter, layoffs were the exclusive or primary method of reducing the work force, the record does not support that. Prior to the Healy Awards, Article 6 precluded voluntary layoff of any employee in the regular work force, and there is no evidence that the Postal Service ever has invoked the Article 6 procedure since then. On the contrary, Postal Service witness Brenker testified without contradiction that it never has done so.

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<sup>3</sup> This was agreed to in a Step 4 settlement dated June 6, 2007. Absent contractual entitlement to severance pay in addition to VER, ELM 435.1 would exclude an involuntarily separated employee from receiving severance pay if the employee is entitled to an immediate retirement annuity.

The Union asserts that the Postal Service has utilized Article 12, rather than Article 6, to achieve work force reductions, and argues that whenever the Postal Service obtains VER authorization in implementing Article 12, employees who accept VER should get the same severance pay benefit as if the Postal Service was applying Article 6. As previously pointed out, entitlement to severance pay under Article 6 is not tied to or contingent on VER. Moreover, the provision for severance pay in Article 6.B.4 is prefaced by the language:

Before implementation of reassignment under this Article [i.e., Article 6] or, if necessary, layoff and reduction in force of excess employees within the installation, the Employer will...

(Emphasis added.)

In deciding this case, I am bound by the following provision in Article 15.5.A.6 of the National Agreement:

All decisions of arbitrators shall be limited to the terms and provisions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended, or modified by an arbitrator.

I have no authority to extend the entitlement to severance pay under Article 6.B.4 to employees who take VER offered in connection with a reassignment effected under Article 12, whatever I otherwise might think of the Union's contention that employees who take VER in those circumstances ought to be entitled in terms of equity and fairness to the same benefits as if the Postal Service was implementing the procedure in Article 6. Similarly, I have no authority to read into Article 12 a right to severance pay if an employee takes a VER offered in conjunction with implementation of the reassignment procedure in Article 12. As the Postal Service stresses, under the controlling terms of the National Agreement, the two procedures are separate and distinct.

AWARD

Accordingly, this grievance must be denied.

A handwritten signature in black ink, appearing to read "Shyam Das", is written over a horizontal line.

Shyam Das, Arbitrator