



U.S. Department
of Transportation
**Federal Aviation
Administration**

Western Pacific Region
Human Resources Management Division

15000 Aviation Boulevard
Lawndale, CA 90261

September 25, 2008

Certified Mail Number: 7003 2260 0003 7297 8358

Hamid "Ham" Ghaffari
NATCA - Western Pacific Regional Vice-President
550 West Vista Way, #405
Vista, CA 92380

RE: 3rd Step Grievance Response

Dear Mr. Ghaffari:

This letter is in response to grievance number NC-08-79364-CCR elevated to Step 3 of the grievance process on July 16, 2008. Time limits to respond by September 26, 2008, have been extended by mutual agreement between the parties. In the elevation the union asserts a violation of Article 9 of 2003 collective bargaining agreement and further files this grievance under protest alleging a violation of Article 9 Section 7 of the 2006 imposed work rules. The union contends that management's prior decision in this case violates the provisions of the 2003 CBA between NATCA and the FAA.

This grievance concerns alleged violation of Articles 66, 10 and 22 of the contract between NATCA and the FAA.

A review of this elevation reveals that this grievance is considered procedurally defective. Although the grievance was originally filed under the 2006 Contract, it is now being elevated under the wrong contract, and further states it is being filed under protest to the 2006 imposed work rules and asserts an argument pertaining to the legitimacy of the 2006 contract over the 2003 contract. The 2003 contract between NATCA and the Federal Aviation Administration (FAA) is no longer applicable. Pursuant to 49 U.S.C. §§ 106 and 40122, a new contract became effective on June 5, 2006, and was implemented on September 3, 2006. The FLRA has issued its final decisions upholding the legal effect of the 2006 contract and the jurisdictional notation in this current grievance serves no purpose. For this reason, the grievance is rejected as procedurally defective.

As to the merits of this case, a review of all available documents has been conducted and I find no violation of the agreement. As stated in the prior grievance response, the record indicates the grievant was medically disqualified from performing air traffic duties by the Aerospace Medical Office on February 16, 2007, due to his violent workplace incident and behavior at his facility. The

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Agency's actions of disqualification were consistent with the applicable Medical Standards contained in FAA Order 3930.3A, Appendix 1, Section G.

The grievant was notified by letter dated February 16, 2007 that he was temporarily assigned to administrative leave pending the completion of a Report of Investigation by Security and Hazardous Materials Division. He was further instructed not to report to the Concord facility unless directed to do so by management.

The record further reveals the grievant was charged Sick Leave for one day on February 17, 2007, subsequent to his medical disqualification, however this has since been changed to administrative leave. The record further reveals that effective February 18 through March 17, 2007 (PP06-2007 and PP07-2007) the grievant was placed on Administrative Leave for a total of 152.00 Hours. By letter dated March 12, 2007 the grievant was provided written notice by Manager Jason Ralph of what information would be required to challenge the medical disqualification by the Aerospace Medical Officer. The memo advised the grievant that should he elect to challenge the medical disqualification he was to submit the required medical to Aerospace Medicine by April 2, 2007. The grievant was advised that in accordance with Article 66 Section 6 (b) "...all transportation and expenses will be borne by the employee."

The grievant was further instructed to report to the Livermore Municipal Airport on March 23, 2007 for an interview by security over his conduct at the Concord ATCT on February 16, 2007. Records show the grievant was paid regular work hours for the period during March 18 thru April 14, 2007 (PP08-2007 through PP09-2007) and was not charged any leave.

On April 2, 2007, the grievant requested an extension to provide information to challenge his medical disqualification. On April 4, 2007 Manager Ralph notified the grievant via email he was granting an extension until April 16, 2007 to provide his medical information. On April 24, 2007, a letter was sent to the grievant via his personal email address by Manager Ralph requesting him to review the letter concerning his current leave status and advise Mr. Ralph of his election of the type of leave to utilize. The attached letter in this email was dated April 17, 2007, and also advised the grievant that he was removed from administrative leave status because he was medically incapacitated and has failed to provide any medical documentation to determine his qualification for duty. The records reveal he was placed in a Sick Leave status beginning April 17, 2007.

On April 27, 2007, the grievant responded to the email and memo sent by Manager Ralph indicating he was currently in Seattle, WA and was attempting to provide medical information that would ostensibly clear him to return to duty. The grievant further requested he be continued on an administrative leave status pending his submission of the medical information and until Aerospace Medicine could evaluate his medical information to make a determination of his qualification for ATC duties. The grievant made no election of the type of leave to be used and therefore was charged Sick Leave beginning April 17, 2007 through August 29, 2007 (PP10-2007 through PP19-2007) pursuant to Article 45 Section 1 and 6 of the Contract. The record further reveals the grievant is currently in a paid Administrative Leave status since August 30, 2007.

The grievant subsequently faxed his medical information to Aerospace Medicine on June 6, 2007. By letter dated June 21, 2007, Dr. Goodman informed the grievant he has reviewed all available

information and concluded the grievant was medically disqualified from performing his air traffic duties pursuant to FAA Order 3930.3A, [Air Traffic Control Specialist Health Program]. This notification also informed the grievant of his right of appeal and if he chose to appeal of his responsibility to pay for any additional information he wishes to present.

On July 12, 2007, the grievant requested information and payment for medical expenses in a letter to the Regional Flight Surgeon. By letter dated July 23, 2007, the Regional Flight Surgeon reminded the grievant of his responsibility to prove that he meets the medical standards of his position. The treating physician (Dr. Haldman) chosen by the grievant and the letter author by Dr. Haldman indicated he did not meet the specific medical standards as noted in the FAA Order 3930.3A and accordingly the grievant would not be reimbursed for his medical evaluation. These actions are consistent with Article 66 Section 6(b) of the 2006 Contract. As such, the Agency finds no violation of the contract as alleged in the grievance.

Concerning the alleged violation of Article 10, at the time of this grievance, no disciplinary/adverse action has been taken. As such, it is the Agency position that there is no violation of the contract as alleged in the grievance.

Concerning the alleged violation of Article 22, the grievant has requested and was provide with all documentation requested by him under several FOIA requests. As such, it is the Agency position that there is no violation of the contract as alleged in the grievance.

The grievant also alleges his time and attendance is incorrect in that he was charged with sick leave or annual leave when he should have been in an administrative leave status. It must be noted that pursuant to a prior Settlement Agreement, corrections were made to the grievant's leave status and 72.00 hours of Sick Leave was amended to reflect Administrative Leave in PP20-2007 (September 4-14, 2007). Based on the above, the grievant has been correctly charged and placed in the appropriate leave status.

Based on the above and for all the reasons previously stated in prior decisions, this grievance is denied. Moreover, neither the grievant nor the union has provided any evidence of a contractual violation of the collective bargaining agreement and/or any supplement thereto.

Sincerely,



Dan Castellon
Acting Manager, Labor Relations
AWP-16

cc: Air Traffic Manager
Concord ATCT (CCR)
Mark Deplasco – SFO ATCT
File

<p>Lewis-FAA Case 8/2012 FLRA filing Ex. # 45.3</p>
