

IN THE MATTER OF THE ARBITRATION BETWEEN
UNITED STATES POSTAL SERVICE
CHICAGO, ILLINOIS

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- and -

AMERICAN POSTAL WORKERS UNION, AFL-CIO

Arbitrator: William Haber, Ann Arbor, Michigan

Case No.: CLT-4D-D 24745

Date of Grievance: November 15, 1983

Date of Hearing: March 16, 1984

Issue: Removal of Anthony Dade

Opinion and Award: March 27, 1984

1. Issue

This arbitration grows out of a grievance filed by and on behalf of Anthony Dade, a custodian at the Main Post Office Chicago, Illinois. He received a Notice of Removal dated October 19, effective November 19, 1983, for physically assaulting a security officer on August 20 and unacceptable conduct on September 22, 1983. The grievance was not satisfactorily resolved through the several steps of the grievance procedure and was submitted to arbitration before William Haber of Ann Arbor, Michigan, a member of the Regular Arbitration Panel.

2. Hearing and Appearances

A Hearing on this grievance was held in the Main Post Office in Chicago, Illinois, on March 16, 1984. The Postal Service was represented by John E. Marshall, Labor Relations Specialist, who presented the case. Present with him was Gene E. Cannon, Labor Relations Assistant. Also present and testifying were Dianne Lee, Security Officer; Robert Smith, Security Inspector; as well as D. Giovenco; I. Curry; P. Osborne, Clerk;

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T. Dennard, Cafeteria Cashier; L. Goldsby, Security Officer; J. Jesse, Postal Inspector; L. D. McDonald, Supervisor Building Services; and Bosley.

The Union was represented by Jim Wheeler, Business Agent, who presented the case and testified as a witness. Present with him was James R. Powers, Technical Assistant, Business Agent. Also present and testifying were Anthony Dade, grievant, and Stanley Turner.

The Arbitrator was provided with several Joint Exhibits:

J 1 is the current National Agreement between the parties.

J 2 is a copy of the grievance package. The grievance is dated November 15, 1983 and states that Management should have been aware of the grievant's condition. He suffers from hypertension and removal is harsh, unfair and discriminatory. There is uncertainty as to what really happened in the cafeteria and the grievance requests that Anthony Dade be made whole and returned to work with back pay.

Attached to the grievance is a medical record, dated December 19, 1983, explaining that the grievant's behavior - assaulting an officer and unacceptable conduct - is not unusual for a patient with his psychiatric disorder. However, "this sort of behavior generally stops when a patient is stabilized on his medication." After compliance with prescribed medication no further incidents should occur. It is signed by a social worker.

Also included is the step 2 decision, dated December 9, 1983, signed by James Ford, Labor Relations Assistant, stating that the removal was warranted and for just cause. The grievance was denied. This decision was appealed on December 16, 1983, and again denied on January 17, 1984. It was moved to arbitration on February 2, 1984.

J 3 is a copy of the Notice of Removal. It is dated October 19, 1983. The grievant is charged with: No.1, physically assaulting a Postal Security Officer on August 20, 1983, on Postal premises; and No.2, unacceptable conduct on September 22, 1983. In both instances the behavior was unacceptable.

J 4 is a copy of "General Orders," issued by the Chicago Post Office on January 28, 1981, concerning Fights and Altercations indicating that the immediate corrective actions which will be taken may include emergency suspension, then removal.

J 5 is another one page copy from "General Orders," dated May 25, 1983, with the Arbitrator's attention called to Unacceptable Conduct.

J 6 is an abstract from "Personnel Operations." Paragraph 262.11 refers to Preference Eligibles under the Veterans' Preference Act of 1944. Included in the list of restricted positions is that of custodian.

Several Exhibits were submitted by the Postal Service:

PS 1 is a statement made by Dianne Lee. It is signed on August 20, 1983 and she relates that while sitting at the desk on that date, Anthony Dade, the grievant, "grabbed me by the breast." He sought to get away and was held by the officer and pushed against the lockers. The statement is sworn to and subscribed before the Postal Inspector on that date.

PS 2 is a statement by the grievant, made in the presence of two Postal Police Officers, stating that he understood his rights and indicating that he had too much to drink the night before, that he was doing "all sorts of weird things" and that he did not know what he was doing. There is one line in this statement: "I touch that woman breast." (The Arbitrator cannot make out whether this is a statement that he did, in fact, touch her, or depending upon the intonation, were he saying it, instead of writing it, he was denying that he did so.)

PS 3 is a statement, also dated August 20, 1983 at 10:00 a.m., made by the Security Force Supervisor who interviewed the grievant who indicated that anything that he did to Dianne Lee should not be classified as assault; that he did not touch her at all; that he did say something to her; he is quoted as having said that he did not remember grabbing her, but "I guess I did." He indicated that whatever he did, he did not mean it and would apologize. The author of this Exhibit states that the grievant was very incoherent.

PS 4 is a statement made by Thelma Dennard, whose work station is in the Canteen. She describes the grievant's behavior while in the Canteen, refers to the fact that he was knocking on the table and talking loud. The author of the report called for help and refers to the fact that the same thing happened on September 22, 1983.

PS 5 is from R. W. Smith, Security Supervisor of Tour Two, dated September 23, 1983, stating that the grievant had been involved in two recent incidents and he has been and continues to be a hazard to anyone around him, and perhaps even to himself.

PS 6 is a statement by Lenon Goldsby, PPO, stating his version of what transpired in the cafeteria according to Thelma Dennard, referred to in PS Exhibit 4. The grievant was on the fourth floor in the cafeteria, "frightening people ... by shouting threatening statements very loudly, and beating his fist upon the table." The grievant was observed sitting at the table quietly, suddenly he threw his head back, commenced to laugh loudly and commenced to beat his fist upon the table. With the assistance of other officers he was arrested and transported to a security force office. The grievant's supervisor was contacted and told about his behavior and arrest. Reference was also made to the grievant's visit to the medical facility to obtain a psychiatric examination, which was not provided at that time. In view of his questionable mental state, it was determined to place him on emergency suspension for the duration of the day. He was advised to keep an appointment with a doctor who could help him.

The Union submitted two Exhibits:

U 1 is a Notice of Emergency Suspension, dated August 20, 1983. The reasons state that his retention in an active duty status may be detrimental and injurious to him, to others, the general public, or the government. Specifically, on Saturday, August 20, 1983, "you assaulted security guard" and that this is conduct unbecoming a Postal employee.

U 2 is a medical record, "progress notes," made out by a social worker for December 7, 1982; January 4, 6, 13 and 20; February 1; March 1; April 5; May 3; June 6; July 5; August 2; September 6 and 23, 1983. The Exhibit also contains a report in technical medical terms from the Veterans Administration.

The final document attached to this Exhibit is dated December 19, 1983, indicating that the grievant was a patient at the VA Westside Medical Unit. It states that he received medication and attends a monthly supportive care group. It states that his diagnosis is "affective disorder manic type," that his behavior is not unusual for a patient with this psychiatric disorder and that such behavior generally stops when the patient is stabilized on his medication.

In addition to the Exhibits the Arbitrator was provided with an arbitration award by Linda DiLeone Klein, dated March 5, 1984.

The parties waived Post-Hearing Briefs and provided an oral summary at the conclusion of the formal Hearing.

3. Position of the Parties

It is the Employer's position that the grievant, a custodian, "without provocation assaulted a security officer," that is, he "grabbed" her breast. This incident occurred on August 20, 1983. In another incident, a month later, September 22, the grievant, while present in the fourth floor cafeteria, "caused a disturbance," by knocking on the table and talking loud. The security police were summoned. He was transported to the security office and was charged with creating a disturbance. The Employer maintains that just cause existed for the notice of removal issued to him on October 19, 1983.

Management, the Employer contends, was justified in reacting to his behavior as it did. The Employer rejects the Union position that what the grievant did was not so bad. After all, the Postal Service contends, he grabbed the young lady by her breast and such action borders on an assault and provides adequate cause for severe discipline.

Concerning the second incident, the so-called disturbance in the cafeteria, where the grievant was pounding the table and laughing loudly, disturbing and even frightening others in the cafeteria, the Employer was justified in concluding, he testified, that the grievant may be a hazard to anyone around him and perhaps even to himself. Being a short term employee, there is no justification for tolerance and consideration which might be allowed for an employee with substantial seniority. The fact that the grievant was sick, the Postal Service states, does not absolve him from following the rules and regulations.

The Employer produced no less than ten witnesses at the Hearing, each one of whom testified what transpired, what they saw and what they heard. Among these was the police officer who was allegedly assaulted, the security supervisor who was on duty on the day of the incident, those who were on the fourth floor of the cafeteria on September 22 (second incident) who report that the grievant was having "a conversation by himself, banging the table, as if talking to somebody." One witness, Inez Curry, reported that it frightened her.

The Arbitrator is asked to sustain the Employer's action in removing the grievant and to dismiss the grievance.

The position of the Union is to question the propriety of a harsh and excessive reaction of the Postal Service supervisors to the grievant's conduct on August 20 and September 22, 1983. The Union denies that in reaching out and "touching" officer Lee can be termed as assault. Nor can his behavior in the cafeteria on September 22 be termed as disturbance. He was watching television, as were some of the others. He reacted to what he saw with a loud laugh and expressed his excitement by pounding the table. Such behavior, in the Union's view, hardly justifies the classification of a disturbance and the imposition of industrial capital punishment.

The grievant does not deny the two incidents, that is, the encounter with officer Lee on August 20 and the events in the cafeteria on September 22. He strongly denies the interpretation which has been given to these two incidents. He did not "grab," he "touched" officer Lee. In the cafeteria he

denies any disturbance. He saw something amusing and laughed. He may have laughed loudly and may have slapped the table. In any event, when the officers came for him, he left with them. He offered no resistance.

Moreover, he had been disciplined for three days for the alleged incident on August 20. For the second incident he was terminated. He admits that he may have laughed loudly and may have slapped the table. At the same time, the Union contends, the principle of progressive discipline upon which the Employer relies had not been followed. If discipline was justified for the second incident, then removal from his job was too harsh and unjustified. The grievant testified to the effect that no one ever told him that he was a problem or that he was about to lose his job.

The Union asks that the grievance should be sustained and for the Arbitrator to grant such remedy as he deemed appropriate.

4. Discussion: Opinion and Award

This Arbitrator, on the basis of a rather large experience with literally dozens of grievances, has observed time and again that there are no simple cases. This is a good illustration of that generalization. To begin with, the grievant has very minimal seniority, less than one year, and the special considerations that might have been given to a long term employee, do not apply.

Second, the grievant was hired with the Employer's full awareness that he was entitled to Veterans Preference, and that he had been released from the Armed Forces because of his

mental shortcomings. The Arbitrator cannot avoid asking whether the Postal Service, having employed him, does not have the responsibility to give him an opportunity to establish whether he can, in fact, become a productive employee.

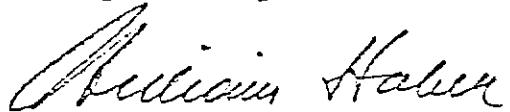
The Arbitrator is disturbed by the fact that the elements of progressive discipline have not been fully implemented. There was an incident on August 20 for which he was given a five to seven day suspension, later reduced to three days. There was another incident, on September 22, for which he was terminated. In both incidents the grievant, while conceding that they took place, pleaded for an interpretation of his conduct which rejects the Employer's characterization of "assault" for the first one, and a "disturbance" for the second one. The Arbitrator is not inclined to reject the grievant's plea that the so-called disturbance was somewhat exaggerated.

The Arbitrator is aware of the fact that the Postal Service is not a rehabilitation center, and that the Employer has a responsibility to exclude from employment those who might be a danger to themselves, to fellow employees or to Postal property. The Arbitrator is simply not convinced that such a hazard existed. It is his opinion that some additional steps in the progressive discipline procedure should have been utilized.

Moreover, it would have been in order if the grievant would have been told that he was a problem and that his conduct, if repeated, clearly created a risk that he would be removed. The grievant claimed that no such advice or warning was given to him.

It is the Arbitrator's conclusion and Opinion and Award that the grievant should be given another opportunity. He should be returned to work within two (2) weeks of the receipt of this Award and told that he is on probation for 90 days. The Postal Service would be justified to respond by the first manifestation of unacceptable behavior with appropriate discipline, including termination.

Respectfully submitted,



William Haber