

REGULAR ARBITRATION

2866]

In the Matter of Arbitration) Grievant: Gregory A. Robison
)
)
between) Post Office: Boerne, TX
)
)
UNITED STATES POSTAL SERVICE) USPS Case No.: G06N-4G-D 09317555
)
)
and))
)
)
NATIONAL ASSOCIATION OF))
LETTER CARRIERS, AFL-CIO))

APPEARANCES:

For the U.S. Postal Service .. Mary Ann Longenecker

For the Union: Javier Bernal

Place of Hearing: Boerne, TX

Date of Hearing: December 02, 2009

Date of Written Closing Statements: December 11, 2009

Date of Award: January 11, 2010

AWARD:

The grievance is barred from arbitration.

PANEL: Regular Contract

Patrick Halter
Patrick Halter

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**VICE PRESIDENT'S
OFFICE
NALC HEADQUARTERS**

REGULAR ARBITRATION

In the Matter of Arbitration) **OPINION & AWARD**
)
 between)
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UNITED STATES POSTAL SERVICE)
Boerne, Texas)
)
-and-)
)
NATIONAL ASSOCIATION OF LETTER)
CARRIERS, Branch No. 421)
)

OF THE
ARBITRATOR

USPS No. G06N-4G-D 09317555
NALC DRT No. 10-140450

APPEARANCES

For the Postal Service:

Michael H. Cox
Florencio "Joe" Tablizo
Edward J. Jaramillo
Edmundo Mata

Postmaster
Supervisor, Customer Services
204b Supervisor
Postmaster

For the Union:

Toby Boyd
Gregory A. Robison

Vice-President, Branch No. 421
Grievant

PERTINENT NATIONAL AGREEMENT PROVISIONS

Article 15 – Grievance Arbitration Procedure

Article 16 – Arbitration

BACKGROUND

On June 23, 2009, Gregory A. Robison, the grievant, was charged with "Unacceptable Performance – Failure to Follow Instructions/Failure to Properly Perform the Duties of Your Position." The Service asserts that grievant violated ELM 665.13, Discharge of Duties; ELM 665.12, Incomplete Mail Disposition; Handbook M-41 at 112.2, Diligence and Promptness and M-41 at 131.3, Actual Delivery.

NALC asserts there is no just cause for the discharge.

At the outset of the hearing the Service argued the grievance was barred from arbitration; NALC disagreed.

ISSUES

Is the grievance barred from arbitration? If the grievance is not barred from arbitration, did the Service violate Article 16 when it discharged the grievant and, if so, what is the appropriate remedy?

POSTAL SERVICE POSITION

From the outset the Service has argued that the grievance is not subject to arbitration because grievant's representative was not certified in accordance with Article 17. There is a designated steward at the Boerne Post Office; however, grievant selected a union official (Toby Boyd) from outside the facility.

Article 17 requires written certification of Mr. Boyd's designation prior to his commencing his representational duties in the grievance process. The grievance process began on June 30, 2009, when he submitted a request for information to investigate the grievance but a written certification was not issued until July 1. Thus, the grievance is procedurally deficient and barred from arbitration.

As for the merits of this grievance, the Service followed progressive discipline in reaching its decision to remove the grievant from employment. Prior corrective action was unsuccessful in rehabilitating the grievant. Active discipline in grievant's record shows a letter of warning, a 7-day suspension, and a 14-day suspension; all are based on unacceptable work performance – failure to follow instructions. In short, grievant was placed on notice that a continuation of his unacceptable behavior would have consequences that could lead to discharge.

On May 11 and 14, 2009, Postmaster Cox accompanied grievant on his route for the purpose of documenting a PS Form 3999 evaluation. Postmaster Cox and Supervisor Tablizo observed the grievant return to the facility on May 11; he did not complete his deliveries and returned with mail. Additionally, grievant failed to take lunch at an authorized area. On May 14 Postmaster Cox observed grievant commencing his route delivery at an address other than where he had been instructed to begin on that day notwithstanding the fact he had been instructed three times prior to leaving the facility to begin delivery at 313 Frey. He did not forget but intentional disregarded the instructions from the Postmaster and supervisors. Given his 20 years with the Service, grievant has the experience and expertise to follow instructions as to where to deliver mail and take lunch as spelled out on his PS Form 1564A.

The last incident was May 14 and the investigative interview was held on June 5. There was higher level review and concurrence; Article 16.8 reserves to the Service the selection of the official for higher level review and Mr. Huron was a higher level authority beyond Postmaster Cox. Any delay in issuing discipline was due to grievant's absence from the worksite.

The discharge is reasonable and not untimely. The grievance should be denied.

UNION POSITION

The grievant's representative was certified in accordance with Article 17. In this regard, the supervisor signed and acknowledged the request for documentation on July 1, the same date that the written certification was issued. The request for documentation does not initiate the time period for filing a grievance. JCAM 15.2 defines the date of the Informal Step A discussion as the filing date. In this grievance the filing date is July 16 (Informal Step A) which is well after the July 1 written certification of Toby Boyd as grievant's representative pursuant to Article 17.

With respect to May 11, grievant returned to the facility with mail because he assumed he was not on the overtime desired list. This erroneous assumption is not a basis for discipline. In addition to grievant not refusing to carry mail on May 11, he did not refuse to deviate from his route on May 14. Grievant was not instructed on May 14 to begin his delivery at 313 Frey rather than at the beginning of his route. Since Postmaster Cox was present on May 14 when grievant did not

commence delivery at 313 Frey, the Postmaster had an obligation to approach grievant and correct his delivery to the proper location.

Additionally the Postmaster had an obligation to inquire to grievant why he was taking lunch at the Antique Mall. Grievant believed his PS Form 1564A had been modified to include this location. Grievant may have chosen that location because of crowding at other approved stops. When the Postmaster did not ask any questions he provided tacit approval for grievant to deliver his route and take lunch as he chose to do so.

There is no just cause for discipline; the Service failed to sustain its burden of proof. Moreover, the discipline is not timely. Grievant was charged with infractions occurring on May 11 and May 14 but the Service did not initiate an investigation until June 5 when it conducted an investigative interview with the grievant. A letter of charges was not issued until June 23. The issues are straightforward and do not require over 40 days to issue a proposal.

Besides untimely discipline, the review and concurrence was procedurally defective. Discipline is the responsibility of the immediate supervisor but a higher level official (Postmaster/OIC) directed it in this case and review and concurrence was undertaken by an official outside the chain of responsibility in Boerne.

As a remedy, the Union requests that grievant be reinstated and made whole for any loss of pay and benefits and that his discharge be expunged from all records.

NALC submitted the regional awards in G06N-4G-D 08122356 (Clarke, 2009) and H94N-4H-D 96060209 (Johnston, 1996).

DISCUSSION

JCAM 17-1 states that the National Agreement authorizes stewards as union representatives and NALC officials to represent carriers in the investigation, presentation and adjustment of grievances. JCAM 17-1 states, furthermore, that NALC may designate, in writing, one union officer, who may also be a steward in a different section, actively employed at an installation to act as a steward to investigate, present and adjust a specific grievance or to investigate a specific problem to determine whether to file a grievance.

In this regard, a steward's rights include activities to review relevant documents, files and records. JCAM 31-2 states that the Service will make available to the union all relevant information necessary for collective bargaining or the enforcement, administration or interpretation of the Agreement including information necessary to determine whether to file a grievance.

Turning to the situation at hand, Article 17.2.B concerns the designation of an officer to act in lieu of a certified steward. Article 17.2.B can not be ignored when it deals with the situation which exists in this case. That section reads, in part, that "the activities of such Union officers shall be in lieu of a steward designated under the formula in Section 2.A and shall be in accordance with Section 3." That sentence makes it clear that Article 17.2.B is applicable to this grievance. That is, there was a certified steward at the Boerne Post Office but he did not represent the grievant. Rather a union official outside the facility presented himself as the grievant's designated representative.

Although Article 17.2.B does not negate the Union's exclusive function to appoint stewards or dictate which officer to appoint as stewards in specific cases, it does limit certification of officers as stewards to a specific grievance or incident which might result in a grievance.

The facts of this grievance show that on June 30, 2009, Toby Boyd submitted a request for information. His request reflects a basic knowledge of the grievant's case because it identifies officials with knowledge of the grievance and specific documents related to the discharge. Boyd's request is consistent with JCAM 31-2 where he "must have a reason for seeking the information" and "cannot conduct a 'fishing expedition' into Postal Service records." The request for information was a representation by Boyd to the Service that he was the designated representative for the grievant.

At the time of that request (June 30), NALC had not issued a written certification to the Service as to Boyd's representational status of grievant. In fact, there is a steward on the certified list employed at the Boerne post office. The written certification did not surface until July 1. NALC argues that since the Service did not sign for receipt of the request for information until July 1, Boyd's certification is proper. The date of receipt of the request is not dispositive of Boyd's status. He was representing grievant in the investigating stage, as authorized to do so in JCAM 17-1, by requesting documents. This is an integral part of the process for the Union to determine whether or not to even file a grievance.

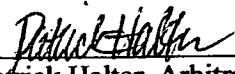
A designated representative's role and duties include the request for information to assist the representative in determining whether to file a grievance. That is what Boyd did on June 30 but he did so without certification in accordance with Article 17. The letter of certification is dated July 1; however, he initiated his responsibilities to represent grievant on June 30 when he filed a request for information. This grievance is procedurally defective and barred from arbitration.

It is particularly distressing when a removal case fails procedurally and the merits are never reached. Nevertheless, in Article 15.4.A.6 the parties agreed that arbitrators' decisions "shall be limited to the terms and conditions of this Agreement, and in no event may the terms and provisions of this Agreement be altered, amended or modified by an arbitrator." The National Agreement does not contain an exception which allows the contract to be bypassed to ensure that removal cases are heard on the merits. The parties themselves have, in effect, required that the arbitrator not overlook a Article 17.2 violation.

These findings and conclusions are reflected in the award that follows.

AWARD

The grievance is barred from arbitration.



Patrick Halter, Arbitrator